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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 116.

DAVID H. MOFFAT, JUNIOR, APPELLANT.

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 14, 1880.

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INDEX.

	Original.	Print.
Caption	1	1
PROCEEDINGS IN THIRD JUDICIAL DISTRICT COURT.		
Bill of complaint filed	1	1
Papers filed	3	1
Subpœna and return	4	2
Stipulation of counsel	5	2
Precipe for discontinuance of case as to certain defendants	6	3
Amended bill	7	3
Demurrer of Moffat, jr., to amended bill	21	11
Do.	23	12
Exceptions to answer of Moffatt, jr.	26	14
Stanton and Cook	29	15
Moffatt, jr	31	16
Stanton and Cook	33	17
Motion and affidavit to further amend amended bill	35	18
PROCEEDINGS IN CIRCUIT COURT UNITED STATES.		
Cause dismissed as to Stanton and Cook, and Moffat, jr., ordered to plead	38	19
Answer of Moffat, jr., to amended bill	39	20
Stanton and Cook to amended bill	47	23
Second amended bill of complaint	55	27
Answer of Moffat, jr., to second amended bill	62	32

	Original.	Print.
Replication	68	36
Cause referred to master	70	37
Order consolidating cases	70	37
Order granting motion to hear oral testimony	71	37
Deposition of Gleason F. Lewis	71	38
Hearing	82	43
Order that Peyton, special agent, deliver certain papers to the clerk	82	44
Hearing continued	83	44
Do.	84	44
Order that clerk deliver certain papers to Peyton, special agent	84	45
Report of master	85	45
Exhibit A (map)	86	45
B (map)	87	45
Testimony of D. W. Van Horn	89	46
Thomas O. Boggs	95	48
Luke Cahill	104	52
R. K. Vandiver	109	54
G. M. Woodworth	120	58
Geo. Peck	126	60
A. E. Carpenter	132	63
Charles W. Bowman	136	64
John Carroll	142	66
Linus E. Boomer	146	68
Samuel A. Hutchins	150	70
George H. Hill	161	75
Samuel N. Wood	169	78
Daniel Witter	176	81
Jerome B. Chaffee	195	88
Samuel S. Landon	209	94
Richard Simpson	216	97
Order for submission of cause	230	102
Notes of evidence taken before the court	231	102
Memorandum on back of envelope	231	102
Certificate of location	232	102
Receiver's receipt	233	103
Non-mineral affidavit	234	103
Certificate of register and receiver	235	104
Proof of right of pre-emption (affidavit of Beck and Hall)	236	105
Florida land scrip No. 176	237	106
Memorandum on back of envelope	241	107
Certificate of location	242	107
Receiver's receipt	243	108
Non-mineral affidavit	243	108
Certificate of register and receiver	244	108
Proof of right of pre-emption (affidavit of Peasley and Quinlan)	246	110
Florida land scrip No. 4	248	111
Testimony of Lucius Payton	252	112
E. K. Stimson	267	118
Ferd. Barndollar	271	120
H. K. Pickney	273	121
Lucius Payton (recalled)	276	122
Thomas O'Brien	280	123
J. O. Bosworth	286	126
Clarence Clark	294	129

	Original.	Print.
Testimony of Chas. A. Cook	300	131
L. Dougal	301	131
Hyatt Hussey	303	132
E. W. Cobb	305	133
Certificate of Judge Hallett	309	135
Stipulation of counsel	315	137
Decree	317	138
Appeal	324	141
Appeal bond	325	142
Citation	327	143
Proof of service	328	144
Clerk's certificate	329	144

1 Pleas in the circuit court of the United States for the district of Colorado.

Present, the honorable the judges thereof.

TRANSCRIPT PLADITA DISTRICT COURT.

Be it remembered that heretofore, to wit, on the third day of June, A. D. 1874, the same being one of the regular judicial days of the June term, A. D. 1874, of the district court of the United States of the third judicial district of the Territory of Colorado, begun and holden at the city of Pueblo, in said district, on Tuesday, the second day of June, A. D. 1874—present, the honorable Moses Hallett, chief justice of the supreme court and judge of the district court of the third judicial district of Colorado Territory; H. C. Alleman, esq., attorney of the United States for Colorado Territory; Geo. A. Bute, clerk of said court; M. A. Shaffenburg, United States marshal, by Abe R. Ellis, deputy—the following order was had and entered of record in said court in said cause, to wit:

Order: Bill in chancery filed. In dist. ct., Col. Terr.

Now comes H. C. Alleman, attorney of the United States for Colorado Territory, and now here, in open court, presents to the court certain bills in chancery to compel surrender of certain land patents for vacation and cancellation, to wit:

2 THE UNITED STATES OF AMERICA
vs.
IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., Thomas Harris, Eli Turner, Simeon D. Porter, Anson Beck. } G. D. N. 284.

* * * * * * *

And the said H. C. Alleman, Esq., prays that the same may be filed and entered of record, and that writs of summons issue to the respective respondents returnable on the first Monday of July next (A. D. 1874). And it is so ordered by the court.

3 *Placita for filing of certain pleadings (originals) theretofore filed in Territorial district court.*

And afterwards, and on, to wit, the 15th day of December, A. D. 1876, came the United States of America, by W. H. Parker, esq., acting district attorney, and filed in said court certain paper writings heretofore filed (as appears by the file-mark thereon of the clerk of said court) in the district court of the third judicial district of the Territory of Colorado, sitting for the trial of causes arising under the laws of the United States, and in a certain cause in the said district court lately pending, wherein the United States of America was complainant and Irving W. Stanton and others were defendants, and the said paper writings so heretofore filed in the said district court are entitled as follows:

Chancery subpœna, issued June 10th, A. D. 1874.
Stipulation of counsel as to affidavit to demurrers.
Precipe for discontinuance as to Harris, Turner, Porter, and Beck.
Amended bill.
Demurrer to same.
Demurrer to same.
Exceptions to answer of David H. Moffat, jr., to amended bill of complaint, filed May 24th, 1876.
Exceptions to joint and several answer of Stanton and Cook to amended bill of complaint.
Exceptions for insufficiency to answer of David H. Moffat, jr., to amended bill of complaint.
4 Exceptions for insufficiency to joint and several answer of Stanton and Cook to amended bill.
Motion and affidavit to further amend amended bill.
And the said chancery subpœna is in words and figures as follows, to wit:

Chancery subpœna.

The President of the United States of America to Irving W. Stanton, of Pueblo, Colorado; Charles A. Cook, of Pueblo, Colorado; David H. Moffat, jr., of Denver, Colorado; Thomas Harris, Eli Turner, Simeon D. Porter, and Anson Beck, greeting:

You are hereby commanded that you, and each of you, personally appear before the judge of the district court of the United States of America for the third judicial district of Colorado Territory, in equity, on the first Monday (it being the sixth day) of July, A. D. 1874, wheresoever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by the United States of America, and to do further and receive what the said court shall consider in that behalf; and this you are
5 not to omit under the penalty prescribed by law.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Pueblo, on the tenth day of June, A. D. one thousand eight hundred and seventy-four.

(SEAL DISTRICT COURT OF COLORADO TERRITORY, THIRD JUDICIAL DISTRICT.)

GEORGE A. BUTE, *Clerk.*

Complainant's solicitor: H. C. ALLEMAN Esqr.
Attorney of the United States.

The within subpœna served on the defendants, Charles A. Cook and David H Moffitt, jr., on the fifteenth day of June, A. D. 1874, by delivering to and leaving with them a copy thereof, and at the same time showing them this original with the seal of the court attached. The remaining defendants not found within my district after due and diligent search.

M. A. SHAFFENBURG,
U. S. Marshal,
By W. H. SALISBURY, *Dp'y.*

(Endorsed:) United States of America. Colorado Territory, third judicial district. G. D. No. 284. To the term, A. D. 187 . United States of America, complainant, vs. Irving W. Stanton et al., defendants.

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of July, A. D. 1874, or the bill will be taken pro confesso against them.

GEORGE A. BUTE, *Clerk.*

Returned and filed . , clerk. , complainant's solicitor.

And the said stipulation of counsel is in words and figures as follows, to wit:

Stipulation of counsel.

TERRITORY OF COLORADO,
County of Pueblo, ss:

In district court of the third judicial district, sitting for the trans-
6 action of business arising under the Constitution and laws of the United States in and for the third judicial district, of October rule day, A. D. 1874.

It is stipulated and agreed by and between H. C. Alleman, United States district attorney for the district of Colorado, on behalf of the United States, and H. C. Thatcher, Sayre, Wright & Butler, attorneys for I. W. Stanton, that the usual affidavit required by U. S. Supreme Court rules in equity may be appended to all the demurrers filed in said court wherein the United States is complainant, and Irving W. Stanton is one of the defendants.

SAYRE, WRIGHT & BUTLER AND
H. C. THATCHER,
Attorneys for I. W Stanton.
H. C. ALLEMAN,
Attorney of the United States for Colorado Territory.

(Endorsed:) United States of America vs. David H. Moffat et al. Bill to compel, &c. Stipulations. Filed September 26th, 1874. George A. Bute, clerk.

And the said precipe for discontinuance as to Harris, Turner, Porter, and Beck is in words and figures as follows, to wit:

Precipe for discontinuance as to Harris, Turner, Porter, and Beck.

In the district court of the third judicial district of Colorado Territory, sitting at Pueblo, for the trial and adjudication of causes arising under the Constitution and laws of the United States, in and for the body of the third judicial district of Colorado Territory. In chancery sitting.

UNITED STATES OF AMERICA *vs.* 7 IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., Thomas Harris, Eli Turner, Simeon D. Porter, Anson Beck.	G. D. No 284. Bill in equity.

And now, to wit, July 17th, A. D. 1875, comes H. C. Alleman, attor-

ney of the United States for Colorado Territory, and complainant's solicitor, and directs a judgment of discontinuance to be entered in the above case, so far only, however, as relates to Thomas Harris, Eli Turner, Simeon D. Porter, and Anson Beck; but the bill to remain, so far as the other defendants named herein are concerned, against the other defendants.

H. C. ALLEMAN,
Attorney of the United States for Colorado Territory,
and Complainant's Solicitor.

To GEORGE A. BUTE, Esq.,
Clerk of the District Court,
Third Judicial District, Pueblo, Colorado.

(Endorsed:) No. 284, G. D. Third judicial district of Colorado Territory. United States of America vs. Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., Thomas Harris, Eli Turner, Simeon D. Porter, and Anson Beck. In equity. Judgment of discontinuance as to some of the defendants. Filed July 19, 1875. George A. Bute, clerk. H. C. Alleman, attorney of the United States for Colorado, and complainant's solicitor.

And the said amended bill, filed July 19th, A. D. 1875, is in words and figures as follows, to wit:

Amended bill.—Filed July 19, 1875.

8 UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district in the Territory of Colorado, sitting for the trial of the causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado Territory. To December term, A. D. 1875.

UNITED STATES OF AMERICA *vs.* IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr.	G. D. No. 284. Amended bill. In chancery.

To the honorable Moses Hallett, chief justice of the supreme court of Colorado and judge of the third judicial district of Colorado Territory, in chancery sitting:

Humbly informing, showeth unto your honor, your orator, the United States of America, at the instance of the honorable Everett C. Banfield, Solicitor of the Treasury of the United States of America, makes this information and brings this bill against Irving W. Stanton, a resident of the said third judicial district of Colorado and a citizen of the Territory of Colorado; Charles A. Cook, a resident of the first judicial district of Colorado and a citizen of the Territory of Colorado; David H. Moffat, jr., a resident of the first judicial district of Colorado and a citizen of the Territory of Colorado.

9 And, therefore, your orator complains, and says that your orator acquired the absolute ownership, and is the owner in fee-simple, of

one hundred and sixty acres of land in the county of Bent, in the said third judicial district of Colorado Territory, described as follows, to wit, comprising the southeast quarter of section numbered eight (8), in township numbered twenty-three (23) south, of range numbered fifty-two (52) west of the sixth principal meridian, situated, lying, and being in the county of Bent, in the said third judicial district of Colorado Territory, and within the jurisdiction of this court, of which your orator was and is the absolute owner in fee-simple, and which said land is subject to the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841.

And your orator further shows unto your honor that some person to your orator at present unknown, but whose name when discovered your orator prays leave to insert herein, with apt words to charge him as a party defendant hereto, appeared before one of the officers at the United States land office at Pueblo, in the said judicial district, and personated one called Eli Turner, who is a fictitious person, as hereinafter stated, and made and filed a declaratory statement in writing, describing the above land and declaring the intention of said Eli Turner to claim the same under the provisions of the said act of Congress; and that the said person to your orator unknown did also appear before the said Irving W. Stanton, the register of the United States land office at Pueblo *of the United States land office at Pueblo* in the said judicial district, on the sixteenth day of May, A. D. 1873, and personate the said fictitious person and submit his
10 proof of right of said so-called Eli Turner to pre-empt said land, and in that name to make and file an affidavit before the said Irving W. Stanton, then register of the United States land office at Pueblo, wherein such person so personating the said so-called Eli Turner deposed that he, the said Eli Turner, had made settlement upon and improved the aforesaid land in good faith to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation; and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which he might acquire from your orator would inure in whole or in part to the benefit of any person except himself; and that the said person to your orator unknown did, upon the same day last aforesaid, procure one called Simeon D. Porter and one called Anson Beck to appear before the said Irving W. Stanton, then register of the United States land office at Pueblo, and make, subscribe, and file an affidavit wherein they, the said so-called Simeon D. Porter and Anson Beck, appear to have deposed and sworn that he, the said Eli Turner, was over the age of twenty-one years, and a citizen of the United States, and an inhabitant of the said tract of land; that no other person resided upon it entitled to the right of pre-emption; that the said Eli Turner entered upon the said land and made a settlement in person on the said land since the 4th day of September, 1841, to wit, on the tenth day of May, 1872; that he built a house and made other improvements on the said land; that he lived in the said house and made it his exclusive home from the twentieth day of May, 1872, to the date of making said oath and subscribing said affidavit; that he did not remove from
11 his own lands within the Territory of Colorado to make the said settlement; and that he has since plowed, fenced, and cultivated about three acres of said land.

And your orator further shows unto your honor that upon the proof so being made of the right of said so-called Eli Turner to pre-empt said land, and the forwarding of the same to the General Land Office of your orator, a patent was issued by your orator to or in the name of said fictitious person called Eli Turner for the above described land, signed by U. S. Grant, President of the United States of America, by S. D. Williamson, secretary, and by L. K. Lippincott, recorder, of the General Land Office of the United States of America, under the seal of the General Land Office of the United States of America, and purporting to convey to the said fictitious person called Eli Turner the above described land in fee-simple, and bearing date the 4th day of October, A. D. 1873.

And your orator further showeth unto your honor that, confiding in the truth of the statements so made as aforesaid in the said affidavits and proof, it was induced to and did issue the said patent for the land aforesaid in the name of the said fictitious person called Eli Turner, and that your orator was thereby deceived, defrauded, and misled, and in truth and in fact the said so-called Eli Turner is a fictitious person; that no such person ever resided upon, improved, inhabited, or occupied the said land, and that the statements so contained in the said affidavits and proof are wholly, utterly, and absolutely false.

Now your orator further shows unto your honor that the said Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., did, upon, to wit, the twenty-third day of June, A. D. 1873, procure some person to your orator unknown, but who when discovered your orator prays leave to make a party defendant to this bill with apt words to charge him as such, to
12 personate such fictitious person called Eli Turner, and in his name to make and execute a deed of conveyance for the above-described land to a fictitious person called Thomas Harris; and on, to wit, the twenty-sixth day of June, A. D. 1873, the said Irving W. Stanton, Charles A. Cook, David H. Moffat jr., did procure some person to your orator unknown, but who when discovered your orator prays leave to make a party defendant to this bill with apt words to charge him as such, to personate a fictitious person called Thomas Harris, and in his name to make and execute a deed of conveyance for the above-described land to the said David H. Moffat, jr.; which said deeds of conveyance were duly recorded in the office of the county clerk and recorder of the county of Bent, in the said third judicial district of Colorado Territory, on the 14th day of November, A. D. 1873, in volume I, reference thereto being had will more fully and at large appear.

And your orator further shows unto your honor that the said several transfers of the said tract of land were made previous to the issuing of the said patent, which bears date the 4th day of October, A. D. 1873, and that the records of the said county of Bent do not show that the said patent has been recorded in the office of the county clerk & recorder of the said county of Bent.

And your orator further shows unto your honor that the said David H. Moffat, jr., at the time of the pretended conveyance to him from said fictitious person called Thomas Harris, had knowledge and well knew of all the facts and acts of frauds above stated, committed in the procuring the title from your orator for said land, and that the said so-called Thomas Harris and the so-called Eli Turner were fictitious persons.

And your orator well hoped that no dispute would have arisen

13 touching the surrender and cancellation of the said patent; but that the said defendants would have complied with the reasonable request of your orator, as in conscience and equity they ought to have done. But now so it is, may it please your honor, that the said Irving W. Stanton, then register of the United States land office at Pueblo, and Charles A. Cook, then a receiver of public moneys for the district of lands subject to sale in the Arkansas Valley land district at Pueblo, David H. Moffat, jr., combining and confederating with the said persons to your orator unknown, but whose names when discovered your orator prays may be inserted herein with apt words to charge them as parties defendants hereto, and contriving how to injure, wrong, and oppress your orator in the premises, now absolutely refuse to comply with such request, sometimes pretending that the said declaratory statement was regular, and that the said proof of right of pre-emption was in strict conformity with the statutes regulating it, and that the said patent was regularly and lawfully obtained, and that after passing out of the hands of the original holder your orator is precluded from legally pursuing the said defendants, and has no claim upon them for the surrender of the said patent to the end that the same may be annulled and cancelled. And the said defendants at other times allege and pretend that the said patent is now beyond the right and control of your orator; that it was transferred to purchasers who had no notice or knowledge whatever of the fraudulent means used and resorted to for its issue and possession, and that it is a good and valid conveyance of the said lands in the hands of an innocent purchaser. Whereas your orator charges the contrary thereof to be the truth, and that the fraud practised vitiates the patent, and that

14 it was irregularly and unlawfully procured and issued by reason of false and fraudulent means and devices. All of which actings, doings, and pretences of the said defendants were contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this character are properly cognizable and relievable:

To the end, therefore, that the said defendants, and the rest of the confederates when discovered may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written and printed they are respectively required to answer; that is to say:

I. Whether the said conspiracy embraced others than the defendants herein named, by whom the said conspiracy was concocted, the full names of all the parties who participated therein and were connected therewith, the respective parts which each of the conspirators were to take and did take in the inception and progress of the said conspiracy, the manner in which the said conspiracy was carried out, together with all the facts and circumstances connected with the agreement and conspiracy to obtain a patent by fraud from the United States to and for the said tract of land?

II. Whether the said declaratory statement was in fact made by
15 anyone; and, if so, by whom, and whether it was not made out and signed by some one connected with the United States land office at Pueblo, or by some one at the dictation or suggestion of some one connected with the said land office?

III. Whether the said proof of right of pre-emption was signed and sworn to by any person or persons as pre-emptor and witnesses; and, if so, by whom, when, and under what circumstances, at whose dictation and at whose suggestion?

IV. Whether the respective oaths purporting to have been administered to the alleged pre-emptor and alleged witnesses were administered; and, if so, when, by whom, and to whom?

V. Whether the said proof of right of pre-emption was not prepared and signed by some one connected with the United States land office at Pueblo, and whether the alleged pre-emptor and alleged witnesses are not myths, and unknown fictitious persons?

VI. Whether the said declaratory statement and proof of right of pre-emption, or either of them, were not made out and signed at the instance of the defendants hereto, or of any one of these defendants; and, if so, by which of the defendants or by whom?

VII. Whether you were not cognizant of the frauds used in procuring the said patent; what your knowledge is in reference to the said frauds; what your knowledge is of the means used in securing the said patent, and the full particulars of the said frauds and the means used in obtaining the said patent?

VIII. Whether you did not furnish money, or authorize money to be furnished, for land scrip, agricultural scrip, college scrip, agricultural college scrip, or other means to secure the location of the said tract of land in the name of the alleged pre-emptor?

IX. Whether you did not furnish money, authorize or cause
16 money to be furnished for the payment of the requisite fees to the United States or the receiver of public moneys at Pueblo and register of the United States land office at Pueblo, for the location of the said tract of land, and in payment of the necessary fees on the said proof of right of pre-emption to secure the patent for and to the said tract of land?

X. Whether you did not procure some person or persons to personate the said alleged pre-emptor and the said alleged witnesses to the said proof of right of pre-emption; and, if so, who the person or persons were, and what knowledge you have of the personation by any one or more of the said alleged pre-emptor and alleged witnesses to the said proof?

XI. Whether you did not authorize the procurement of a person or persons to personate the alleged pre-emptor and alleged witnesses to the said proof of right of pre-emption, and what your full knowledge is of any personation in the premises?

XII. Whether you did not furnish money to Hon. Jerome B. Chaffee, when delegate in Congress, to procure the patent to the aforesaid tract of land in the name of the alleged pre-emptor by illegitimate means, or pay him, or cause to be paid to him, money for obtaining the said patent by illegal means?

XIII. Whether you did not furnish money or means to procure the proof of right of pre-emption to the aforesaid tract of land in the name of the

aforesaid alleged pre-emptor, and whether you did not pay, or cause to be paid, the necessary fees and costs to locate the said land, and procure a patent therefor, which is now in your possession?

XIV. Whether you did not authorize or cause the said conveyances of the said land to be made, and under what circumstances they were made, and your full knowledge of the making and executing of the
17 said deeds of conveyance and the transfer of the said land and patent to David H. Moffat, jr.?

XV. Whether the said deeds of conveyance were made at the dates purporting their execution, by whom they were respectively made, and at whose instance and by whose authority they, and each of them, were made, with your full knowledge in the premises?

XVI. Whether David H. Moffat, jr., is not the present holder and possessor of the patent to and for the said land; and, if so, by what means he became possessed of it, and what knowledge he had and has of the means used to procure and secure the said patent, and from whom he obtained possession of the patent to and for the said tract of land?

XVII. Whether David H. Moffat, jr., was not the possessor of the patent to the said tract of land; and, if so, by what means he became possessed of it, and what knowledge he had of the means used to procure and secure the aforesaid patent?

XVIII. Whether the said several conveyances of the said tract of land were not made subsequent to the date of the patent, to wit, October 4th, A. D. 1873, and when the said conveyances were made, and where they were made?

XIX. Whether the said deeds of conveyance were acknowledged before anyone authorized to administer oaths; and, if so, before whom and by whom were the said deeds of conveyance executed?

XX. Whether the present title to the said land through an United States patent is not in David H. Moffat, jr.; and, if so, how he became possessed of such title?

XXI. Whether the said patent was not procured through fraud-
18 ulent representations, by whom the said patent was procured, and your full knowledge of the means used, and the manner of procuring it?

XXII. Whether the said David H. Moffat, jr., was not cognizant of the frauds used, and the illegitimate manner resorted to in procuring the patent to the said land, and what his full knowledge is and was in securing it?

XXIII. Whether the said David H. Moffat, jr., did not direct and cause to be recorded in the county clerk and recorder's office of Bent County, Colorado, the several deeds of conveyance of the said tract of land, and by whom the said deeds of conveyance were sent, and what instructions, if any, were given the said person relative to the recording of the said conveyances?

XXIV. Whether full knowledge of the said conspiracy and of the frauds connected with the procuring of the said patent was not fully known by you, and what your knowledge is of the facts connected therewith?

XXV. Whether any good reason can be given why the said patent should not be surrendered for annulment, vacation, and cancellation?

XXVI. Whether any good reason can be given why the said several

deeds of conveyance should not be delivered up for annulment, cancellation, and vacation?

XXVII. Whether any good reason can be given why the relief hereby prayed should not be granted?

And that the said defendants may surrender, and be required by a decree in chancery to surrender, the said patent for annulment, vacation, and cancellation, and that the said deeds from the said fictitious persons, called Eli Turner and Thomas Harris, may also be cancelled and declared
19 null and void, to which your orator is justly and equitably entitled, and that your orator may have such further and other relief in the premises as the nature of the case may require and to your honor may seem meet and agreeable to equity and good conscience.

May it please your honor to grant unto your orator the writ of chancery summons of the United States of America, arising out of and under the seal of this honorable court, to be made returnable according to law and directed to the said Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., whereby the said defendants and the rest of the confederates when discovered may be summoned, and thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be inserted, to be and appear before your honor in this honorable court on a certain day, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order an decree therein as to your honor as the judge of and holding said court, may make and shall seem meet, and as shall seem agreeable to equity and good conscience. And your orator will ever pray, etc.

H. C. ALLEMAN,
Attorney of the United States for Colorado Territory and Complainant's Solicitor.

NOTE.—Irving W. Stanton will please answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

Charles A. Cook will please answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

David H. Moffat, jr., will please answer the interrogatories
20 numbered respectively 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

will please answer the interrogatories numbered respectively

H. C. ALLEMAN,
Attorney of the United States for Colorado Territory and Complainant's Solicitor.

(Endorsed:) No. 284. G. D. Third judicial district of Colorado Territory. United States of America vs. Irving W. Stanton, Charles A. Cook, David H. Moffat, jr. In chancery. Amended bill of complaint to compel the surrender of a land patent for vacation and cancellation. Filed July 19, 1875. George A. Bute, clerk. H. C. Alleman, attorney of the United States for Colorado and complainant's solicitor.

And the said demurrer to amended bill, so as aforesaid filed on July 19th, 1875, is in words and figures as follows, to wit:

Demurrer to amended bill.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district in the Territory of Colorado, sitting for the transaction of business and the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado. In chancery. Of the December term, A. D. 1875.

21 IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, JR., *ats.* UNITED STATES OF AMERICA. } Demurrer to amended bill.

The demurrer of David H. Moffat, jr., one of the above-named defendants, to the bill of complaint of the United States of America, complainant.

This defendant, by protestation, not acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto; and for cause of demurrer says that it appears by the said complainant's own showing by its said bill of complaint that the said complainant is not entitled to the discovery or relief prayed by its said bill against this defendant. And for special causes of demurrer to said bill this defendant shows to the court here:

First. Equity does not reach fraud that is of a penal nature.

Second. There is no offer on the part of the complainant to do equity; i. e., to return the money received by the complainant for the land in said bill described.

Third. It is simply averred that a patent issued for the land, but the patent is not set forth in the bill according to its legal effect, nor yet appended to the bill as an exhibit.

Fourth. The conveyance from the said fictitious person to Moffat is not set forth with circumstance and precision—whether by livery of seisin, or by deed or otherwise. It is not set forth according to legal effect or otherwise, either in the bill or as an exhibit.

Fifth. The defendants are charged with refusing to comply
22 with the requests of the complainant, but the complainant fails to set forth any request whatsoever.

Sixth. There is no averment that the defendants, or either of them, claim to own this land, or have any interest therein or right thereto, or that said transfers and patent are yet in force or valid or effectual for any purpose.

Seventh. The bill avers that the defendant Moffat, at the time of the conveyance to him from an alleged fictitious person, "well knew of the acts and facts of fraud above stated," not that he had knowledge of any facts or things specifically averred, and from which fraud might be inferred as a matter of law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, said defendant demurs to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill; and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of David H. Moffat, jr., one of the defendants, to the bill of complaint of the United States of America, complainant, is well founded in law, and proper to be filed in the above cause.

SAYRE, WRIGHT & BUTLER,
W. F. STONE, & THATCHER & GAST.
Solicitors and of Counsel for Defendant.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

David H. Moffat, jr., being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint in this suit, and that
23 the same is not interposed for the purpose of delaying said suit or any proceeding therein.

DAVID H. MOFFAT, JR.

Subscribed and sworn to before me this 24th day of December, A. D. 1875.

A. W. BRAZEE,
Associate Justice Sup. Ct. Col. Ter.

(Endorsed:) D. H. Moffat, jr., et al. ats. The United States of America. G. D., 284. Demurrer to amended bill. Filed Dec'b'r 27th, 1875. George A. Bute, clerk.

And the said demurrer to amended bill filed Dec. 27th, 1875, as aforesaid, is in words and figures as follows, to wit:

Demurrer to amended bill.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the transaction of business and the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado. In chancery. Of the December term, A. D. 1875.

IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, JR., *ats.* UNITED STATES OF AMERICA.	Demurrer to amended bill.

24 The demurrer of David H. Moffat, jr., one of the above-named defendants, to the bill of complaint of the United States of America, complainant.

This defendant by protestation, not acknowledging all or any of the

matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto, and for cause of demurrer says that it appears by the said complainant's own showing by its said bill of complaint that the said complainant is not entitled to the discovery or relief prayed by its said bill against this defendant. And for special causes of demurrer to said bill this defendant shows to the court here:

First. Equity does not reach fraud that is of a penal nature.

Second. There is no offer on the part of the complainant to do equity; i. e., to return the money received by the complainant for the land in said bill described.

Third. It is simply averred that a patent issued for the land, but the patent is not set forth in the bill according to its legal effect, nor yet appended to the bill as an exhibit.

Fourth. The conveyance from the said fictitious person to Moffat is not set forth with circumstance and precision—whether by livery of seisin, or by deed or otherwise. It is not set forth according to legal effect or otherwise, either in the bill or as an exhibit.

Fifth. The defendants are charged with refusing to comply with the requests of the complainant, but the complainant fails to set forth any request whatsoever.

Sixth. There is no averment that the defendants, or either of them, claim to own this land, or have any interest therein, or right thereto, or that said transfers and patent are yet in force, or valid or effectual for any purpose.

25 Seventh. The bill avers that the defendant Moffat, at the time of the conveyance to him from an alleged fictitious person, "well knew of the acts and facts of fraud above stated," not that he had knowledge of any facts or things specifically averred, and from which fraud might be inferred as a matter of law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, said defendant demurs to the said bill, and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of David H. Moffat, jr., one of the defendants to the bill of complaint of the United States of America, complainant, is well founded in law and proper to be filed in the above cause.

SAYRE, WRIGHT & BUTLER,
W. F. STONE &
THATCHER & GAST,
Solicitors and of Counsel for Defendant.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

David H. Moffat, jr., being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

DAVID H. MOFFAT, JR.

Subscribed and sworn to before me this 24th day of December, A. D. 1875.

A. W. BRAZEE,
Associate Justice Sup. Ct., Col. Ter.

26 (Endorsed:) D. H. Moffat, jr., et al. ats. The United States of America. G. D. 284. Demurrer to amended bill. Filed Dec'b'r 27th, 1875. George A. Bute, clerk.

And the said exceptions to answer of David H. Moffat, jr., to the amended bill of complaint, are in words and figures as follows, to wit:

Exceptions to answer of David H. Moffat, jr., to amended bill of complaint.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the district aforesaid, sitting for the trial of
27 causes arising under the Constitution and laws of the United States in and for the body of said district. Of May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, jr., defendants. } In chancery.

Exceptions taken by the complainant to the answer of the defendant David H. Moffat, jr., to the complainant's amended bill of complaint, in this cause, for impertinence:

First. For that the following part of said answer, namely, "And further answering this defendant says that he is informed, and verily believes it to be true, and therefore he states it as a fact, that the person alleged in said bill to have personated an unreal or supposed person in the matter of the pre-emption of said land, and to have made a false affidavit in relation to his right of pre-emption, as well as the said other persons who are charged in said bill by the complainant, to have made a false affidavit of and concerning the same matter, have not been nor has any one or more of them been arrested, indicted, or convicted for the fraud, or for the perjury alleged in said bill to have been committed respectively by them, nor has any proceeding been commenced by the said complainant, or by any person in its behalf, for the purpose of bringing the said persons, or any of them, to trial or legal examination for the alleged fraud and crime charged against them, respectively, in the complainant's said bill. Wherefore he insists that the said complainant is not entitled upon its own case to the relief prayed for in said bill," is impertinent.

28 Second. For that the following part of said answer, namely, "And this defendant, as to the several interrogatories appended to said bill, and which the said complainant calls upon him to answer, saith that he is advised that the said complainant hath not by its own statement in said bill made out such a case as, under the laws relating thereto and the rules and prac-

tice of this court, entitles the said complainant to the discovery sought to be obtained by said interrogatories, and that he is not by law bound to answer the same, or any of them. And this defendant submits to the judgment of this court, and insists that by reason of the premises this suit is altogether unnecessary and vexatious; and he claims the same benefit from this answer as if he had pleaded the several matters hereinbefore stated, or any of them, or as if he had demurred to the said bill, or to any part thereof," is impertinent.

In all which particulars the complainant excepts to the said answer of the defendant David H. Moffat, jr., as impertinent, and insists that the same ought to be expunged from the said answer.

CHARLES D. BRADLEY,
United States Attorney for Colorado.
E. P. JACOBSON,
Of Counsel for Complainant.

(Endorsed:) No. 284. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for impertinence to answer of David H. Moffat, jr. Filed May 24th, 1876. George A. Bute, clerk.

29 And the said exceptions to answer of Stanton and Cook are in words and figures as follows, to wit:

Exceptions for impertinence to answer of Stanton & Cook.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo.

In the district court of the district aforesaid, sitting for the trial of causes arising under the Constitution and laws of the United States, in and for the body of said district, of May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, JR., defendants. } In chancery.

Exception taken by the complainant to the joint and several answer of the defendants, Irving W. Stanton and Charles A. Cook, to the complainant's amended bill of complaint in this cause for impertinence:

First. For that the following part of said answer, namely, "But inasmuch as these defendants have no knowledge, information, or belief that any fraud was committed in procuring from the said complainant the title to said land, they do not believe, and therefore they deny that the said David H. Moffat, jr., had the knowledge so as aforesaid alleged in said bill to have been by him possessed," is impertinent.

Second. For that the following part of said answer, namely,
30 "And further answering these defendants say that they are informed and verily believe it to be true, and therefore state it as a fact, that the person alleged in said bill to have personated an unreal or supposed person in the matter of the pre-emption of said land, and who is alleged to have made a false affidavit in relation to his right of pre-emption, as well as the other persons who are charged in said bill by the complainant to have made a false affidavit of and concerning the same

matter have not been, nor has any one or more of them been, arrested, indicted, or convicted for the fraud or for the perjury in said bill alleged to have been committed by them respectively; nor has any proceeding been commenced by the said complainant or by any person in its behalf, for the purpose of bringing the said persons or any of them to trial or legal examination for the alleged fraud and crime charged against them respectively, in the complainant's said bill; wherefore they insist that the said complainant is not entitled upon its own case to the relief prayed in its said bill," is impertinent.

Third. For that the following part of said answer, namely, "These defendants as to the several interrogatories appended to said bill, and which the said complainant calls upon them severally to answer, say that they are advised that the said complainant hath not, by its own statement in said bill made out such a case as under the laws relating thereto and the rules and practice of this court, entitles the said complainant to the discovery sought to be obtained by said interrogatories, and that they are not by law bound to answer the same," is impertinent.

In all which particulars the complainant excepts to the said
31 answer of the defendants, Stanton and Cook, as impertinent, and insists that the same ought to be expunged from the said answer.

CHARLES D. BRADLEY,
United States Attorney for Colorado.
E. P. JACOBSON,
Of Counsel for Complainant.

(Endorsed:) No. 284. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for impertinence to answer of Stanton & Cook. Filed May 24, 1876. George A. Bute, clerk.

And the said exceptions for insufficiency to the answer of David H. Moffat, jr., to amended bill of complaint, are in words and figures as follows, to wit:

Exceptions for insufficiency to answer of D. H. Moffat, jr.

UNITED STATES OF AMERICA,
TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the district aforesaid, sitting for the trial of causes arising under the Constitution and laws of the United States, in and for the body of said district. Of May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., defendants.
} In chancery.

32 Exceptions taken by the complainant to the insufficient answer of the defendant, David H. Moffat, jr., to the complainant's amended bill of complaint in this cause:

First. For that so much of said answer as avers, "That he is also in-

formed, and believes it to be true, not being advised to the contrary thereof save by the said complainant's bill of complaint, and, therefore, claims the fact to be, that the said Eli Turner, who appears to have been the pre-emptor of said land, was not a fictitious or supposed person, but a real individual, who in person and in his own name, made the said statement and the said affidavit alleged in said bill of complaint to have been made by said unknown person," is argumentative, evasive, and not directly responsive to the allegations of said bill of complaint.

Second. For that so much of said answer as avers "That this defendant is a stranger to all and singular the matters and things stated in the said declaratory statement, as well as in the said affidavits, and has no knowledge of the truth or falsity thereof, and therefore he leaves the said complainant to make such proof of the allegations of the said bill of complainant and concerning the alleged falsity of the said statement and the said affidavits as it may be able to produce; but, believing the contrary of the said allegations to be true, he denies that the said complainant was deceived, defrauded, and misled in the issuance of the said patent, and that the statements contained in the said affidavits and proof of pre-emption are false, either wholly or in part," are inconsistent, contradictory, and not directly responsive to the allegations of said bill of complaint.

33 Third. For that the defendant, David H. Moffat, jr., has not to the best and utmost of his knowledge, remembrance, information and belief, answered any of the interrogatories propounded to him in the said bill of complaint, or discovered the matters sought to be discovered by said interrogatories in the manner required by the law relating thereto, and the rules and practice of this court.

In all which particulars the complainant excepts to the said answer as evasive, imperfect, and insufficient, and prays that the said defendant may be compelled to put in a full and sufficient answer to said bill of complaint.

CHARLES D. BRADLEY,
United States Attorney for Colorado.
E. P. JACOBSON,
Of Counsel for Complainant.

(Endorsed:) No. 284. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for insufficiency to answer of David H. Moffat, jr. Filed May 24, 1876. George A. Bute, clerk.

And the said exceptions for insufficiency to joint and several answer of Stanton and Cook, to amended bill, are in words and figures as follows, to wit:

Exceptions for insufficiency to answer of Stanton & Cook.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

34 In the district court of the district aforesaid, sitting for the trial of causes arising under the Constitution and laws of the United States, in and for the body of said district. Of May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., defendants.	In chancery.

Exceptions taken by the complainant to the insufficient joint and several answer of the defendants, Irving W. Stanton and Charles A. Cook, to the complainant's amended bill of complaint in this cause:

First. For that the defendants, Irving W. Stanton and Charles A. Cook, have not, nor has either of them, to the best and utmost of their knowledge, remembrance, information, and belief answered any of the interrogatories propounded to them in the said bill of complaint or discovered the matters sought to be discovered by said interrogatories in manner required by the law relating thereto, and the rules and practice of this court.

In which particular the complainant excepts to the said answer as evasive, imperfect, and insufficient, and prays that the said defendants may be compelled to put in a full and sufficient answer to said bill of complaint.

CHARLES D. BRADLEY,
United States Attorney for Colorado.
E. P. JACOBSON,
Of Counsel for Complainant.

35 (Endorsed:) No. 284. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for insufficiency to answer of Stanton & Cook. Filed May 24, 1876. George A. Bute, clerk. Filed in circuit court this 15th day of December, A. D. 1876. Edward F. Bishop, clerk.

And the said motion and affidavit to further amend amended bill is in words and figures as follows, to wit:

Motion and affidavit to further amend amended bill.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado Territory. May term, A. D. 1876.

Comes the United States, by Charles D. Bradley and E. P. Jacobson, its solicitors, and moves the court for leave to further amend its amended bill of complaint in this cause by showing therein that the said Stanton and Cook, defendants herein, themselves, without the appearance before them of any person whatever representing the said Eli Turner, made, prepared, completed, and pretended to swear to, for said Turner, said declaratory statement and proof of pre-emption, and that said David
36 H. Moffat, jr., well knew of said doings and actings in the premises of said Stanton and Moffat, and furnished them the money wherewith to make the location of the land and its pre-emption in the land-

office at the city of Pueblo, and in some other particulars. And for cause of this motion it says that it was advised by its said solicitors that upon the exceptions being filed by it to the answers made to its said amended bill now on file, the said exceptions would be sustained by the court, and the defendants compelled to disclose the whole truth of the scheme in detail whereby the said Moffat became possessed and the owner of said piece of land; and that they would thereby become entitled to the relief prayed in their said amended bill; but that this honorable court having ruled on said exceptions that these defendants ought not to be compelled to disclose the particulars of said scheme, it is not entitled to such decree, and it has recently, and since the last term of court, come in possession of facts whereby it can prove that no person whatever appeared before said Stanton and Cook, but that they themselves prepared, signed, pretended to swear to, and execute said declaratory and pre-emption papers, and that said Moffat well knew of these actings and doings of said Stanton and Cook; that said United States has used every reasonable effort in its power to inform itself of the facts since the last leave to amend its said bill, but could not, owing to the difficulties of discovering the particulars of this alleged fraud without the aid of a discovery from these defendants, obtain the information until a few days before the session of this court, and since the last
37 term thereof. And said United States is informed and advised by its said solicitors that unless leave is given it to further amend its said bill, the proof which it will be able to make of said fraud will present a different case from that charged and stated in said amended bill, and a decree will be rendered against it, on the merits, because of this variance.

By CHARLES D. BRADLEY,
Attorney of the United States for Colorado.
E. P. JACOBSON,
Of Counsel for Complainant.

TERRITORY OF COLORADO,
Pueblo County, ss:

Personally appeared before me E. P. Jacobson, who, being duly sworn according to law, says that he is one of the solicitors in the above-entitled cause, and that the facts set forth in the foregoing motion are true, as he verily believes.

E. P. JACOBSON.

Subscribed and sworn to before me this 27th day of May, A. D. 1876.
GEORGE A. BUTE, *Clerk.*

(Endorsed:) G. D. N. 284 to G. D. N. 310 inc. The United States vs. David H. Moffat, jr. In chancery. Affidavit. Filed May 27th, 1876. George A. Bute, clerk.

38 And theretofore, and on, to wit, the 25th day of January, A. D. 1877, and in the said circuit court of the United States, the following order was had and entered of record in said court in said cause, to wit:

Order: Cause dismissed as to Stanton & Cook, Def't Moffat to plead.

THE UNITED STATES
vs.
IRVING W. STANTON, CHARLES A. COOK, AND David H. Moffat, jr.
9. In chancery. To compel surrender of land patent.

At this day comes W. S. Decker, esq., attorney of the United States for the district of Colorado, and the said defendants, by Alfred Sayre, esq., their solicitor, also come.

And thereupon, on motion of the said district attorney of the United States, it is ordered by the court that this cause stand dismissed as to the said defendants Irving W. Stanton and Charles A. Cook.

And thereupon it is ordered by the court that the said defendant David H. Moffat, jr., plead or answer the bill of *of* complaint herein on or before Monday, the 5th day of February proximo.

39, 40 And afterwards, and on, to wit, the 17th day of February, A. D. 1877, came the said defendant, David H. Moffat, jr., by Alfred Sayre, esq., his solicitor, and filed in said court and in said cause his separate answer to the amended bill of complaint heretofore filed in the said district court in and for the third judicial district of the Territory of Colorado, on the 15th day of May, A. D. 1876, and the said separate answer of Moffat, jr., is in words and figures as follows, to wit:

41 *Answer of D. H. Moffat, jr., to amended bill of complaint.*

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district in the Territory of Colorado, sitting for the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado Territory. To the May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, DAVID H. Moffat, jr., defendants.
Answer of David H. Moffat, jr.

The answer of David H. Moffat, jr., one of the defendants, to the amended bill of complaint of the United States of America, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or to so much and such part or parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, saith: That he admits that heretofore and before
42 the occurrence of the matters and things in the said bill mentioned and alleged, the said complainant was the absolute owner in fee-

simple of the piece or parcel of land in said bill described, and remained such owner up to and until the time the same was pre-empted, on, to wit, the sixteenth day of May, A. D. 1873.

That he denies that the said complainant now is, at the time of the commencement of this suit was, or since the said pre-emption of said land has been, the owner thereof.

That he denies that the said land now is subject to the right of pre-emption under the provisions of the act of Congress named in said bill.

That he admits that it was subject to such right of pre-emption up to and until the same was pre-empted, as before stated.

That as to the allegations of said bill to the effect that some unknown person appeared before one of the officers of the United States land office, at Pueblo, in said judicial district, and personated and represented an individual called Eli Turner, and made and filed a certain statement, called a declaratory statement, the tenor and effect whereof is set forth in said bill; that said person appeared before Irving W. Stanton, at said land office, on the sixteenth day of May, A. D. 1873, and personated the said Eli Turner and submitted the right of the said Eli Turner to pre-empt said land, and made and filed his affidavit as the said Eli Turner, the tenor and effect of which said affidavit is set forth in said bill of complaint; that the said Eli Turner was a fictitious and unreal person, whom the said unknown person represented and personated; that said unknown person did, at the time and place mentioned in said bill of complaint, procure two other persons to appear before Irving
43 W. Stanton, at said land office, and as witnesses for the said alleged Eli Turner did severally make, subscribe, and file an affidavit concerning the right of the said Eli Turner to pre-empt the said land, the contents of which said affidavit is set forth in said bill of complaint; this defendant saith that he is informed, and believes it to be true, that said statement and the said affidavits were made at the time and place and before the person named in said bill of complaint; that he is also informed, and believes it to be true, not being advised to the contrary thereof, save by the said complainant's bill of complaint, and therefore claims the fact to be that the said Eli Turner, who appears to have been the pre-emptor of said land, was not a fictitious or supposed person, but a real individual who in person, and in his own name, made the said statement and the said affidavit, alleged in said bill of complaint to have been made by said unknown person. That this defendant admits that upon the forwarding to the General Land Office of the complainant of the proof of the right of the said Eli Turner to pre-empt said land, the said complainant issued to the said Eli Turner a patent conveying to him the said land in fee-simple.

That this defendant is a stranger to all and singular the matters and things stated in the said declaratory statement, as well as in the said affidavits, and has no knowledge of the truth or falsity thereof, and therefore he leaves the said complainant to make such proof of the allegations of the said bill of complainant, and concerning the alleged falsity of the said statement and the said affidavits, as it may be able to produce; but believing the contrary of the said allegations to be true,
44 he denies that the said complainant was deceived, defrauded, and misled in the issuance of the said patent, and that the statements

contained in the said affidavits and proof of pre-emption are false, either wholly or in part.

That this defendant denies that he and the said Irving W. Stanton and the said Charles A. Cook, or this defendant and any person or persons, did, upon the 23d day of June, A. D. 1873, or upon any other day, procure a person as alleged in said bill to personate the said Eli Turner, or any other person, either real or supposed, and in the name of the said Eli Turner to make and execute a deed of conveyance of the said land to one Thomas Harris, or to any other person, either real or supposed; and this defendant denies that he did, on the twenty-sixth day of June, A. D. 1873, or upon any other day, with the said Cook and the said Stanton, or with any other person or persons, procure some one, as is alleged in said bill, to personate the said Thomas Harris, or any other person, either real or supposed, and in the name of Thomas Harris to make and execute a deed of conveyance to this defendant for said land.

That this defendant has no personal acquaintance with the said several persons who are respectively named as the grantors in said deeds or with the persons by whom they are respectively executed, nor has he any personal knowledge concerning the execution of the said deeds; that to the best of his information, and in his belief, the said deeds of conveyance are executed each by the person therein named as grantor and purporting to have executed the same.

That this defendant admits that the said several conveyances were made previous to the issuance of the patent for said land.

45 That this defendant denies that at the time of the said conveyance to him of the said land he had any knowledge of any fraud, or of any alleged fraud, relating to the procuring of the title to said land from the said complainant, and alleged in the said bill to have been committed, but he avers that he purchased the said land in good faith, and in the belief that there was no question in relation to the title thereto, and that all proceedings relating to the pre-emption thereof were regular and in conformity with law.

And further answering, this defendant says that he is informed and verily believes it to be true, and therefore he states it as a fact, that the person alleged in said bill to have personated an unreal or supposed person in the matter of the pre-emption of said land, and to have made a false affidavit in relation to his right of pre-emption, as well as the said other persons, who are charged in said bill by the complainant to have made a false affidavit of and concerning the same matter, have not been, nor has any one or more of them been, arrested, indicted, or convicted for the fraud or for the perjury alleged in said bill to have been committed respectively by them; nor has any proceeding been commenced by the said complainant, or by any person in its behalf, for the purpose of bringing the said persons, or any of them, to trial or legal examination for the alleged fraud and crime charged against them respectively in the complainant's said bill. Wherefore he insists that the said complainant is not entitled upon its own case to the relief prayed for in said bill.

And this defendant as to the several interrogatories appended to said bill and which the said complainant calls upon him to answer, saith that he is advised that the said complainant hath not by its own statement in

46 said bill made out such a case as, under the law relating thereto and the rules and practice of this court, *as* entitles the said complain-

ant to the discovery sought to be obtained by said interrogatories, and that he is not by law bound to answer the same, or any of them. And this defendant submits to the judgment of this court, and insists that by reason of the premises this suit is altogether unnecessary and vexatious; and he claims the same benefit from this answer as if he had pleaded the several matters hereinbefore stated, or any of them, or as if he had demurred to the said bill or to any part thereof.

And this defendant denies all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill of complaint contained, material or necessary for this defendant to make answer unto, not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DAVID H. MOFFAT, JR.
SAYRE, WRIGHT & BUTLER, &
H. C. THATCHER, &
WILBUR F. STONE,
Sol's for Def't.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

David H. Moffat, jr., being duly sworn, deposes and says that he is the defendant making the foregoing answer; that he has read said answer, and knows the contents thereof, and that the same is true, except as to the matters therein stated on information and belief, and as to those matters he believes the said answer to be true.

47

DAVID H. MOFFAT, JR.

Subscribed and sworn to before me this 13th day of May, A. D. 1876.
AMOS STECK, *Probate Judge.*

(Endorsed:) No. 284. Third judicial district, Colorado Territory. United States of America vs. Irving W. Stanton et al. In chancery. Answer of D. H. Moffat, jr., to amended bill of complaint. Filed May 15th, 1876. George A. Bute, clerk. Filed Feb'y 17th, A. D. 1877. Edward F. Bishop, clerk.

And afterwards and on the same day, to wit, the 17th day of February, A. D. 1877, came the said defendants, Irving W. Stanton and Charles A. Cook, in their own proper persons, and filed in said court and in said cause their joint and several answer to the said amended bill of complaint, heretofore filed in the district court in and for Pueblo County and Territory of Colorado on 22d day of May, 1876.

And the said answer of Stanton and Cook to amended bill is in the words and figures as follows, to wit:

Answer of Stanton and Cook to amended bill.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado Territory. To the May term, A. D. 1876.

48 UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., defendants. } Answer.

The joint and several answer of Irving W. Stanton and Charles A. Cook, two of the defendants, to the amended bill of complaint of the United States of America, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereunto, or to so much and such part or parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, answering say:

That they admit that heretofore and before the occurrence of the matters and things in the said bill mentioned and alleged, the said complainant was the absolute owner in fee-simple of the piece or parcel of land in said bill described, and remained such owner up to and until the time the same was pre-empted, on, to wit, the 16th day of May, A. D. 1873.

That they deny that the said complainant now is, at the time of the commencement of this suit was, or since the said pre-emption of said land has been the owner thereof.

That they deny that the said land now is subject to the right of pre-emption under the provisions of the act of Congress named in said bill.

49 That they admit that it was subject to such right of pre-emption up to and until the same was pre-empted as before stated.

That as to the allegations of said bill to the effect that some unknown person appeared before one of the officers of the United States land office, at Pueblo, in said judicial district, and personated and represented an individual called Eli Turner, and made and filed a certain statement called a declaratory statement, and which is set forth in said bill, and that said person appeared before Irving W. Stanton at said land office on the 16th day of May, A. D. 1873, and personated the said Eli Turner, and submitted the right of the said Eli Turner to pre-empt said land, and made and filed his affidavit as the said Eli Turner, and which said affidavit is set forth in the said bill of complaint, and that the said Eli Turner was an unreal and fictitious person, whom the said unknown person represented and personated, and that the said unknown person did, at the time and place men-

tioned in said bill of complaint, procure two other persons as witnesses for him to appear before Irving W. Stanton at said land office, and severally to make, subscribe, and file an affidavit concerning the right of the said Eli Turner to pre-empt the said land, which said affidavit is set forth in said bill of complaint, these defendants say that the said Charles A. Cook was then receiver of public moneys at said land office, and that the said Irving W. Stanton was the register at said land office; that they admit it to be true that the said statement and the said affidavits were made at the time and place and before the person named in said bill of complaint; and they further say that at the time the said statement was made and filed, and the said affidavits were made and sworn to, these
50 defendants, and each of them, were then informed and then believed, and do now believe, and therefore these defendants state the fact to be, not being advised to the contrary thereof, save by the complainant's said bill of complaint, that the said Eli Turner, the pre-emptor of the said land, was not a fictitious or supposed person, but an individual bearing the name last aforesaid, and who in person and in his said own name made the said statement and the said affidavit set forth in the said bill of complaint, and therein alleged to have been made by said unknown and fictitious person.

That they admit that upon the forwarding to the General Land Office of the complainant of the proof of the right of the said Eli Turner to pre-empt the said land, the said complainant issued to the said Eli Turner a patent, conveying to him the said land in fee-simple.

That these defendants were at the time of the making of the said declaratory statement, as well as of the said affidavits, strangers to all and singular the matters and things therein stated, except as they were informed by the said statement, and by the said affidavits, and by the persons making, subscribing, and swearing to the same; that the matters and things which they so stated and so subscribed and swore to were true, and that to the best of these defendants' information and belief, the contents of the said statement and the said affidavits were and are true. Therefore these defendants deny that the said complainant was deceived, defrauded, and misled in the issuance of the said patent, and that the statements contained in the said affidavits and proof of pre-emption were false, either wholly or in part.

And these defendants deny that they, or either of them, and
51 the said David H. Moffat, jr., did, upon the twenty-third day of June, A. D. 1873, or upon any other day, procure some person, as is alleged in said bill, to personate the said Eli Turner, or any other person, either real or supposed, and in the name of the said Eli Turner to make and execute a deed of conveyance of the said land to one Thomas Harris or to any other person, either real or supposed.

And these defendants deny that they with the said David H. Moffat, jr., or that any one of them and the said David H. Moffat, jr., did, on the twenty-sixth day of June, A. D. 1873, or upon any other day, procure some one, as is alleged in said bill, to personate the said Thomas Harris or any other person, either real or supposed, and in the name of the said Thomas Harris to make and execute a deed of conveyance of said land to the said David H. Moffat, jr.

These defendants say that they have no personal acquaintance with the

said several persons who are respectively named as grantors in said deeds, or with the persons by whom they were respectively executed, nor have they any personal knowledge of and concerning the execution of said deeds, but that to the best of their information and in their belief the said deeds of conveyance are each executed by the person named therein as grantor and purporting to have executed the same.

These defendants admit that the said conveyances purport to have been made previous to the issuance of the patent for said land, but when such conveyances in truth and in fact were made these defendants are ignorant and have no knowledge or information, but they
52 believe them to have been made upon the day of their date.

That as to the allegation in the said bill concerning the knowledge alleged to have been possessed by the said David H. Moffat, jr., at the time of the conveyance to him of the said land by the said Thomas Harris, these defendants have no knowledge or information; but inasmuch as these defendants have no knowledge, information, or belief that any fraud was committed in procuring from the said complainant the title to said land, they do not believe, and therefore they deny, that the said David H. Moffat, jr., had the knowledge so as aforesaid alleged in said bill to have been by him possessed.

And, further answering, these defendants say that they are informed, and verily believe it to be true, and therefore state it as a fact, that the person alleged in said bill to have personated an unreal or supposed person in the matter of the pre-emption of said land, and who is alleged to have made a false affidavit in relation to his right of pre-emption, as well as the other persons who are charged in said bill by the complainant to have made a false affidavit of and concerning the same matter, have not been, nor has any one or more of them been, arrested, indicted, or convicted for the fraud or for the perjury in said bill alleged to have been committed by them respectively; nor has any proceeding been commenced by the said complainant, or by any person in its behalf, for the purpose of bringing the said persons, or any of them, to trial or legal examination for the alleged fraud and crime charged against them respectively in the complainant's said bill; wherefore they insist that the said complainant is not entitled upon its own case to the relief prayed in its said bill.

These defendants, as to the several interrogatories appended to
53 said bill, and which the said complainant calls upon them severally to answer, say that they are advised that the said complainant hath not by its own statement in said bill made out such a case as, under the law relating thereto and the rules and practice of this court, entitles the said complainant to the discovery sought to be obtained by said interrogatories, and that they are not by law bound to answer the same, or any of them.

And these defendants submit to the judgment of this court, and insist that by reason of the premises this suit is altogether unnecessary and vexatious; and they claim the same benefit of this answer as if they had pleaded the several matters herein before stated, or any of them, or as if they had demurred to said bill, or to any part thereof.

And these defendants deny all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill of complaint contained, material or necessary for these defendants to make answer unto, not

herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of these defendants.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

IRVING W. STANTON.
CHAS. A. COOK.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

54 Irving W. Stanton and Charles A. Cook, being duly sworn, each for himself and not one for the other, depose and say that they are the defendants who severally make the above answer; that they have heard the said answer read, and know the contents thereof; that the same is true of their own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters they believe it to be true.

Subscribed and sworn to before me this 20th day of May, A. D. 1876.

AMOS STECK, *Probate Judge.*

(Endorsed:) No. 284. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton and Chas. A. Cook, impleaded, etc. Answer of Stanton & Cook to amended complaint. Filed May 22d, 1876. George A. Bute, clerk. Filed Feb'y 17th, A. D. 1877. Edward F. Bishop, clerk.

And afterwards, and on the same day, to wit, the 17th day of February, A. D. 1877, came again the said complainant, by the said district attorney, and filed in said court and in said cause its second amended bill of complaint theretofore filed in the said district court in and for Pueblo County, and Territory of Colorado on the 9th day of June, A. D. 1876, and the said second amended bill of complaint is in words and figures as follows, to wit:

55 *Second amended bill of complaint.*

UNITED STATES OF AMERICA,
Territory of Colorado, Third Judicial District, ss:

In the district court sitting for the trial of causes and the transaction of business arising under the Constitution and laws of the United States, at the county of Pueblo, for the body of said district. Of May term, A. D. 1876.

To the honorable Moses Hallett, chief justice of said Territory and judge of the district court aforesaid:

The United States of America, by Charles D. Bradley, attorney of the United States for Colorado Territory, and Eugene P. Jacobson, special assistant to said attorney, who prosecute the pleas of said United States in this behalf, brings this its amended bill of complaint against David

H. Moffat, jr., a resident of the first judicial district of said Territory, and thereupon respectfully shows unto your honor that your orator was, on the first day of May, A. D. 1873, the owner in fee-simple of one hundred and sixty acres of land, situate in the county of Bent, in said judicial district, described as follows, to wit, the southeast quarter of section numbered eight, in township numbered twenty-three south, of range numbered fifty-two west of the sixth principal meridian, the same being part of its public domain and subject to the right of pre-emption by virtue of the acts of Congress in that behalf made and provided.

Further complaining, your orator shows that during the month of May aforesaid, and for some time before and afterwards, one Irwing W. Stanton was the register of your orator's land office, and one Charles A. Cook
the receiver of public moneys of your orator, for the district of lands
56 subject to sale in the Arkansas Valley land district, at Pueblo, in Colorado Territory, duly appointed and commissioned, and each performing the duties of his said respective office; that while so holding the offices aforesaid, they, conspiring and confederating with each other, and intending to cheat and defraud your orator out of its patent for the aforesaid piece of land, on the pretext that the same was due to a person who had done all the acts and performed all the duties required of him to be done and performed by virtue of the acts of Congress in that behalf made and provided, wrote out, or caused to be written out, in the form required by law and the regulations of your orator's Commissioner of the General Land Office, a certain paper, commonly called a declaratory statement, in the fictitious name of Eli Turner, and signed, or caused to be signed, the said fictitious name to said statement, by and in which said statement the above said land was described and the person represented by said fictitious name was said to declare his intention to claim said land as a pre-emptor thereof; but the day or date when said statement was so made or signed, or caused to be made and signed, by said Stanton and Cook, your orator is not informed and cannot say, except that the same purports to bear date of May sixteenth, A. D. 1873.

And your orator further shows that at the time of the making and signing of said declaratory statement said Stanton and Cook also wrote out, signed, and executed, or caused to be written out, signed, and executed, in the name of said supposed person, certain other papers, constituting the proof of pre-emption required by the acts of Congress and the rules and regulations of said General Land Office in that behalf made and provided, and consisting, among other things, of an affidavit purporting to have been sworn to before the said Irwing W. Stanton, as such register, by said supposed person, wherein he is said, among other things, to have made a settlement upon and improved said land in good faith to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation, and that he had not directly or indirectly made any agreement or contract in any way or manner, with any person or persons whomsoever, by which the title which he might acquire from your orator would inure, in whole or part, to the benefit of any person except himself; and of an affidavit purporting to have been sworn to before said Stanton, as such register, by two other supposed persons, named Simeon D. Porter and Anson Beck, and which names were in like manner written, or caused to be written, under said affidavit by said Stanton and Cook, wherein said supposed Eli

Turner is, among other things, stated to be a single man, over the age of twenty-one years, and a citizen of the United States and an inhabitant of the said piece of land; that no other person resided upon it entitled to the right of pre-emption; that said supposed Eli Turner entered upon said land and made a settlement in person on the same on the tenth day of May, 1872; that he built a house and made other improvements on said land; that he lived in said house and made it his exclusive home
57 from the twentieth day of May, 1872, to the date of the pretended making of said oath and subscribing said affidavit; that he did not remove from his own lands within the Territory of Colorado to make said settlement; and that he had since plowed, fenced, and cultivated about three acres of said land.

And your orator further shows that at and before the time when said Stanton and Cook wrote out, signed, and executed, or caused to be written out, signed, and executed, and when said Stanton professed to have received the oath of said supposed pre-emptor and witnesses to said proof of pre-emption, said Cook was possessed of a certain scrip, commonly called an agricultural college scrip, issued to the State of Florida in pursuance of an act of Congress in that behalf made and provided, which said scrip bore upon it an endorsement in blank by one W. D. Bloxham, who was in that behalf duly authorized by the legislature of said State; that for the purpose of locating said land with said scrip in the name of said supposed pre-emptor said Stanton and Cook inserted, or caused to be inserted, in said blank endorsement said fictitious name and the residence of said supposed person, and in that name located said scrip on said land in said land office at Pueblo, and they did divers other acts in said fictitious name to cause your orator to believe that said supposed Eli Turner was a real and not a supposed person, and that such supposed person had actually appeared before them and made the several statements and proofs required by law and the regulations of said General Land Office to be made to entitle such supposed person to the pre-emption of said land, and had actually sworn to said proof before said Stanton, as such register.

And your orator further shows that by the rules and regulations of its said General Land Office the officers of a local land office are required, on proof being made in due form of the right of any person to pre-empt any part of your orator's public domain, and the same being located on with agricultural college scrip by such person, to make out in duplicate a certificate setting forth in substance that such person had located said scrip on said land, and to forward one duplicate thereof to said General Land Office and the other to deliver to the person making said location. And your orator says that at the time of writing out and preparing, or causing to be written out and prepared, by said Stanton and Cook, of said proof in said fictitious name, they also made out, pursuant to said rules and regulations and by color of their said office, a certificate setting forth in substance that the supposed person represented by said fictitious name had, on the day of the date of said certificate, located said agricultural college scrip of the State of Florida on said above-described land, and made due proof of his right to pre-empt and receive a patent for said land from your orator. And thereupon said Stanton and Cook, by color of their said office, forwarded said proof, agricultural college scrip, and one of said duplicate certificates to your orator's said General Land Office, at Wash-

ington, in the District of Columbia, and requested a patent for said land to issue from your orator in the name of said supposed person.

And your orator further shows that by the rules and regulations which then and since have governed it in the issuance of patents for lands located with agricultural college scrip no patent was or is issued by your
58 orator except on presentation at its said General Land Office, by the person making said location, his agent, or his assign or his agent, of the duplicate certificate so as aforesaid delivered to the locator of said land.

And your orator further shows that after the forwarding by said Stanton and Cook of said supposed proof of pre-emption, said agricultural college scrip, and one of said duplicate certificates to your orator's said General Land Office, at Washington, on, to wit, the sixteenth day of June, A. D. 1873, one Jerome B. Chaffee, as the agent of the defendant David H. Moffat, jr., appeared before the officers of said General Land Office and presented to them said other duplicate certificate of location, and then *c*request' said officers to cause a patent for said land to issue from your orator to said supposed person, and to be sent to him, said Jerome B. Chaffee. And your orator, confiding in the honesty of its said officers, Stanton and Cook, and believing the statements contained in said supposed proof of pre-emption and certificate of location to be true, and that a person existed who represented said fictitious name, and that he had a bona fide right to pre-empt the above-described land, and being misled by the representations so made in said proof and certificate, and relying entirely on their truth, was induced to, and afterwards, to wit, on the fourth day of October, A. D. 1873, did, in pursuance of the request of said Chaffee, issue its patent to the above-described land in the name of said supposed person and transmit the same to said Chaffee, thereby granting and conveying its title in fee in said land to said supposed person.

And your orator distinctly avers and charges the fact to be that no person by the name of Eli Turner ever settled upon said land or improved the same, and that no person whatsoever appeared or presented himself before said Cook and Stanton, or either of them, at any time, and made said declaratory statement, proof of pre-emption, or agricultural college scrip location, either as a pre-emptor or witness for any pre-emptor, as in and by said proof of pre-emption and location certificate is supposed, but that the same and each of them are false and fraudulent, and were designed, made, and executed by said Stanton and Cook in manner aforesaid, and for the purpose of fraudulently depriving your orator of its title to said land, and vesting the same by other fraudulent means in the defendant David H. Moffat, jr.

And your orator further shows that said Moffat now has said patent, and claims to hold the legal title to and to be the owner of said land by virtue thereof and of certain other conveyances hereinafter mentioned; and your orator avers and charges the fact to be that said duplicate certificate so presented to the officers of said General Land Office was received by said Moffat from the defendant Cook shortly after the time of the making thereof by said Stanton and Cook, and was afterwards by said Moffat placed in the hands of said Chaffee to be presented to said General Land Office as aforesaid, and that at the time of so receiving and placing the same in the hands of said Chaffee said Moffat well knew of the supposed

pre-emption of said land, and that it had been fraudulently made, and that the statements contained in said supposed proof and certificate were false and fraudulent.

59 And your orator further shows that said Moffat now holds a certain deed purporting to have been made and executed on, to wit, the 23d day of June, A. D. 1873, in the name of said supposed Eli Turner, and to have been acknowledged by him in due form of law on the same day, and to convey the above-described land to Thomas Harris, which your orator avers to be also a fictitious person. And said Moffat also holds a certain other deed, purporting to have been made and executed on, to wit, the 26th day of June, A. D. 1873, in the name of said supposed Thomas Harris and to have been acknowledged by him in due form of law on the same day, and to convey said land to him, said Moffat. And your orator says that subsequently to the obtaining of said patent from your orator, on, to wit, the fourteenth day of November, A. D. 1873, said Moffat caused the same, and said deed executed in the name of said supposed Eli Turner and said deed executed in the name of said supposed Thomas Harris, to be recorded in volume 1 of the records of the county clerk and recorder of Bent County, in Colorado Territory, and the same now there remain recorded, as by reference thereto had will more fully appear. But by what means said deeds, or either of them, were made, executed, or acknowledged, or obtained by said Moffat, your orator cannot say; but it charges the fact to be that no person by the name of Eli Turner nor any person by the name of Thomas Harris ever made, executed, or acknowledged either of said deeds. Yet although said Moffat now holds said patent, and well knew at the time he received the certificate from said Cook, as aforesaid, of the fraudulent means which had been employed whereby to induce the making and issuing by your orator of the patent aforesaid, he refuses to redeliver the same to your orator or to cancel the same; and said deeds executed in the name of said supposed Eli Turner and of said supposed Thomas Harris, to cancel he also refuses, although the same are a cloud on the title of your orator to said land, and tend to depreciate the value and sale, and to prevent the improvement thereof under the acts of Congress in that behalf made and provided.

60 Forasmuch, therefore, as your orator is without remedy in the premises save in a court of equity, and to the end that said David H. Moffat, jr., who is made defendant to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that said patent may be set aside and declared void and delivered up to be canceled, and said deed of conveyance from said supposed Eli Turner to said supposed Thomas Harris and from said supposed Thomas Harris to said David H. Moffat, jr., as aforesaid, may be set aside and declared void as against your orator, as a cloud upon the title of your orator, and that said deeds may be delivered up to be canceled, and that your orator may have such other and further relief in the premises as equity may require and to your honor shall seem meet—

May it please your honor that the writ of summons in chancery issue, directed to the marshal of the United States for the Territory of Colorado, commanding him that he summon said David H. Moffat, jr., to appear before this court, on a day in said summons to be stated according to

law, then and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as your honor may make and as shall seem agreeable to equity and good conscience, etc.

CHARLES D. BRADLEY,
Attorney of the United States for Colorado Territory.
EUGENE P. JACOBSON,
Special Assistant to the Attorney of the United States for Colorado Territory.

61 (Endorsed:) No. 284. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. 2d amended bill of complaint. Filed June 9th, 1876. George A. Bute, clerk. Filed Feb'y 17th, A. D. 1877. Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 17th day of February, A. D. 1877, came again the said defendant, D. H. Moffat, jr., by Alfred Sayre, esq., his solicitor, and filed in said court and in said cause his answer to the said second amended bill of complaint herein; and the said answer to the second amended bill of complaint is in words and figures as follows, to wit:

62 *Answer of D. H. Moffat, jr., to second amended bill of complaint.*

UNITED STATES OF AMERICA,
State of Colorado, ss:

In the district court of the United States of America, sitting within and for the district of Colorado. Of the December term, A. D. 1876

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DAVID H. MOFFAT, JR., DEFENDANT. } No. 284.

The answer of David H. Moffat, jr., the defendant, to the second amended bill of complaint of the United States of America, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainty, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or to so much and such part*y* thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, saith:

That he admits that heretofore, and before the occurrence of the matter and things in said bill mentioned and alleged, that the said complainant was the absolute owner in fee-simple of the piece or parcel of land in said bill described, and remained such owner up to and until the time the same was pre-empted on the 16th day of May, A. D. 1873; but the said defendant denies that the said complainant now is, or at the time of the commencement of this suit was, or since the pre-emption of said land has been, the owner thereof, or that the said land now is subject to the right of pre-emption by virtue of the acts of Congress in that behalf made and provided. This defendant also admits that during the month of May, A. D. 1873, and for some time before and afterwards, Irving W. Stanton was the register of the complainant's land office, and one Charles A. Cook was the

receiver of public moneys for the said complainant, for the district of lands subject to sale in the Arkansas Valley land district, at Pueblo, Colorado; but their defendant denies that while holding the said offices aforesaid the said persons conspired and confederated with each other with the intention to cheat and defraud your orator out of its patent for the aforesaid piece of land, on the pretext mentioned in said bill or any other; and this defendant avers that on the sixteenth day of May, A. D. 1873, a certain paper,
63 commonly called a declaratory statement, and in the name of and signed by Eli Turner, was written out in the form required by law and the regulations for your orator's Commissioner for the General Land Office, by said Eli Turner, or for him, in and by which said statement the said land was described and the said Eli Turner declared his intention to claim and hold said land as the pre-emptor thereof; and this defendant denies that the name of the said Eli Turner signed to the said declaratory statement is a fictitious name, and avers that the name signed thereto as aforesaid was the real name of the pre-emptor of said land.

And this defendant admits that at the time of making and signing of said declaratory statements there was written out, signed, and executed certain other papers, constituting the proof of the pre-emption required by the acts of Congress and the rules and regulations of the General Land Office in that behalf made and provided, and consisting, among other things, of an affidavit sworn to before the said Irving W. Stanton, as such register, by the said Eli Turner, wherein he says, among other things, that he made a settlement upon and improved the said land to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title by which he might acquire from your orator would issue, in whole or in part, to the benefit of any person except himself. And the defendant denies that the said affidavit was signed and executed by the said person in an unreal or fictitious name; but on the contrary, therefore, this defendant avers that the said Eli Turner was a real person, and that the name signed to the said affidavit was the said person's real name.

And this defendant further admits that at the time last aforesaid there was an affidavit made and executed and sworn to before the said Stanton, as such register, by two other persons, named respectively Simeon D. Porter and Anson Beck, and who deposed, among other things, that Eli Turner, who executed the said declaratory statement, is a single man, over the age of twenty-one years, and a citizen of the United States, and an inhabitant of said piece of land, and that no other person resided upon it entitled to the right of pre-emption; that the said pre-emptor, Eli Turner, entered upon said land and made a settlement on the same on the tenth day of May, A. D. 1872; that he built a house and made other improvements on said land; that he lived in said house and made it his exclusive home from the twentieth day of May, A. D. 1872, up to the date of said affidavit; that the said pre-emptor did not remove from his own house in the Territory of Colorado to make such a settlement, and that he had since plowed, fenced, and cultivated about three acres of said land; but this defendant denies that the names of Simeon D. Porter and Anson Beck, signed to the said affidavit, were unreal and fictitious names; on

the contrary, therefore, this defendant avers that the names so as aforesaid signed to the said affidavits were the real names of the persons who attached their signatures, and that the said affidavits were sworn to by the persons who signed the names, and that their signatures thereto were real and genuine.

64 And this defendant, further answering, says that as to the allegation of said bill to the effect that when the oath of the said pre-emptor and of the said witnesses to the said proof of pre-emption were written out, signed, and executed (and which said pre-emptor and witnesses are alleged in said bill to be supposed persons), the said Cook was possessed of a certain scrip, commonly called "agricultural scrip," issued to the State of Florida in pursuance of an act of Congress in that behalf made and provided, this defendant has no knowledge or information, except as he is advised by the said complainant's bill of complaint, and therefore this defendant denies the statement of said bill last-above made, and leaves the said complainant to his proof of the same.

And this defendant, further answering, says that the location of the said land with said scrip, and in the name of the said pre-emptor, and the insertion of the name of said pre-emptor in the blank endorsement of said scrip, and the residence of said pre-emptor, and the location of said scrip upon said land, and the other acts and things done to entitle said person to the pre-emption of said land were done and performed by the said Eli Turner and his said witnesses, and not by the said Cook and Stanton, as is alleged in said bill; and that the said pre-emptor and his said witnesses are not supposed, but are real persons, and that they actually appeared and made oath before said Stanton as such register.

And this defendant, further answering, says that he admits that the said Stanton and Cook, in pursuance of the rules and regulations of their said office, made out a certificate setting forth, in substance, that the said Eli Turner had, on the date of the said certificate, located said agricultural college scrip of the State of Florida on the above-described land, and made due proof of his right to pre-empt and receive a patent for said land from the said complainant; and that the said certificate was by the said Stanton and Cook, together with the proof of pre-emption and the said agricultural college scrip, forwarded to the General Land Office at Washington, as is set forth in said bill of complaint; but this defendant denies that the said pre-emptor was in said certificate represented by a fictitious name, and that the proof of said pre-emption was written out and prepared, or caused to be written out and prepared, by the said Stanton and Cook in a fictitious name, and in behalf of an unreal or supposed person.

And this defendant, further answering, says that he denies that on the sixteenth day of June, A. D. 1873, one Jerome B. Chaffee, as the agent of this defendant, appeared before the officers of the General Land Office and presented to them a duplicate certificate of said location, and then requested said officers to cause a patent of said land to issue from said complainant in the name of a supposed person, as is alleged in said bill, and to be sent to him, the said Chaffee; and this defendant admits that after the pre-emption of said land, and on or about the fourth day of October, 1873, the said complainant did issue its patent to the above-described land in the name of the pre-emptor thereof, thereby carrying and conveying the title in fee to said land to the said pre-emptor, which said pre-emptor was a real and

not a supposed person, as is assumed and alleged in said bill of complaint, but whether said patent was transmitted by the said complainant to the said Chaffee is to this defendant unknown.

65 And this defendant avers and charges the fact to be that a person by the name of Eli Turner did settle upon said land and improve the same, and that said person and the said Simeon D. Porter and Anson Beck, as witnesses, appeared and presented themselves before the said Stanton and Cook, or one of them, and made the said declaratory statement, proof of pre-emption, or agricultural college scrip location, as in and by said proof of pre-emption and location certificate is alleged, and that the said persons, and each of them, are real persons, and that none of the proceedings relating to the pre-emption of said land were false or fraudulent, nor were they signed, made, and executed by the said Stanton and Cook, or by any other person or persons, for the purpose of fraudulently depriving the complainant of the title to said land, and of vesting the said title by other fraudulent means in this defendant.

And this defendant, further answering, says that he does claim to hold the legal title to and be the owner of said land by virtue of patents by the said complainant issued therefor, and by virtue of certain conveyances; but he denies that he received a duplicate certificate of the pre-emption of said land from said Cook shortly after the entry of said land, and that he, the said defendant, placed the said certificate in the hands of the said Chaffee, to be by him presented to the General Land Office, and that at the time when it is alleged in the said bill that he so received the said certificate from the hands of the said Cook and placed the same in the hands of the said Chaffee he had knowledge that the said pre-emption of said land had been fraudulently made, and that the statement contained in said proof of pre-emption and certificate of location were false and fraudulent.

And this defendant further denies that he had any knowledge of any fraud or of any alleged fraud relating to the procuring of the title of said land from said complainant, and which is alleged in said bill to have been committed; and he avers that he purchased the said land in good faith and in the belief that there was no question relating to the title thereto, and that all proceedings relating to the title thereof were regular and in conformity with law.

And this defendant, further answering, says that he admits that on the 23rd day of June, A. D. 1873, Eli Turner made and executed a deed acknowledged in due form of law and conveying the above-described land to Thomas Harris, and that he (the defendant) holds a certain other deed, made and executed on the 26th day of June, A. D. 1873, in the name of said Thomas Harris, and acknowledged by him in due form of law on the same date, conveying the said land to this defendant; and that said deeds, and each of them, were recorded in the office of the county clerk and recorder of Bent County, in the now State of Colorado, and that the same now there remains recorded; but this defendant denies that the said grantor and grantee in the first of said deeds and the grantor in the latter of said deeds were unreal and fictitious persons, but on the contrary avers the fact to be that the persons who respectively made, executed, and acknowledged said deeds were real persons, and that such making, executing, and acknowledging thereof were in their real and genuine names.

66 And this defendant denies all manner of unlawful combinations and confederacy wherewith he is by the said bill charged; with-

out this, that there is any other matter, cause, or thing in the said bill of complaint contained, material or necessary for this defendant to make answer unto, not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ALFRED SAYRE,
Solicitor for Defendants.

BUTLER & WRIGHT,
Of Counsel.

67 (Endorsed:) No. 9. In the district court of the United States of America for the district of Colorado. United States of America, complainant, vs. David H. Moffat, jr., defendant. Answer to second amended bill of complaint. Filed Feb'y 17, 1877. Edward F. Bishop, clerk.

68 And afterwards, and on, to wit, the 19th day of February, A. D. 1877, came the said complainant, by Westbrook S. Decker, esq., attorney of the United States for the district of Colorado, and filed in said court and in said cause its replication to the answer of D. H. Moffatt, jr., and the said replication is in words and figures as follows, to wit:

Replication to answer of D. H. Moffat, jr.

Circuit court of the United States for the district of Colorado.

UNITED STATES)
vs.
I. W. STANTON ET AL.)

The replication of the United States, complainant, to the answer of D. H. Moffat, jr., defendants.

The complainant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this complainant; without this, that any matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All
69 which matters and thing' this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed) WESTBROOK S. DECKER,
United States District Attorney for the United States.

(Endorsed:) 9 c. United States vs. I. W. Stanton et al. Replication. Filed February 19, A. D. 1879. (S'd) Edward F. Bishop, clerk. W. S. Decker, att'y for plaintiff.

70 And afterwards, and on to wit, the 19th day of February, A. D. 1877, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

Order: Referring case to master.

THE UNITED STATES *vs.* IRVING W. STANTON ET AL. } 9. In chancery. To compel surrender of land patent.

At this day comes W. S. Decker, esq., district attorney, who prosecutes the pleas of the United States in this behalf, and on his motion it is ordered by the court that this cause be referred to Henry C. F. Jensen, esq., one of the masters in chancery of this court, to take proof touching the matters and things in the said complainant's bill of complaint alleged, and let the said master report the same to the court, when so taken, with all convenient speed.

And afterwards, and on, to wit, the fifth day of July, A. D. 1877, in the said circuit court of the United States, the following order was had and entered of record in said court and in said cause, to wit:

Order: Consolidating this cause with others.

THE UNITED STATES *vs.* DAVID H. MOFFAT, JR., IMPLEADED WITH IRVING W. STANTON AND CHARLES A. COOK. } 9. In chancery. To compel surrender of land patent.

From district court, third district, Colorado Territory.

At this day, for good and sufficient reasons to the court appearing, it is ordered by the court that this cause be consolidated with certain other causes against the said defendant in this court now depending, and numbered, respectively, upon the grand docket of the court as numbers 10, 11, 12, 13, 16, 18, 19, 20, 21, 24, 25, 26, 27, 29, 30, 32, 33, 35, and let the said cause, consolidated as aforesaid, be known and numbered as number 9.

71 And afterwards, and on, to wit, the 6th day of July, A. D. 1877, and in the said circuit court of the United States the following order was had and entered of record in said cause, to wit:

Order: Motion to hear oral testimony before the court granted in part.

THE UNITED STATES *vs.* DAVID H. MOFFAT, JR. } 9. Chancery. To cancel land patent.

At this day comes G. G. Symes, esq., solicitor, who prosecutes the pleas of the United States in this behalf, and the said defendant, by A. Sayre, esq., his solicitor, also comes;

And the motion of the said plaintiff, that oral testimony be had herein

before the court, having heretofore come on to be heard, and having been argued by counsel, and the court being now sufficiently advised in the premises, it is ordered by the court that the said motion be granted as to certain particular issues, and let the said plaintiff file with the clerk a more particular statement of the said issues.

And afterwards, and on, to wit, the 7th day of July, A. D. 1877, the following deposition on behalf of the complainant was opened, published, and filed in said court and in said cause, to wit:

Deposition of Gleason F. Lewis on behalf of plaintiff.—Subpœna.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to Gleason F. Lewis and William E. Lewis:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear before me, Earl Bill,
72 clerk of the circuit court of the United States for the northern district of Ohio, at *the* my office, in the city of Cleveland, in said district, on the 2d day of July, A. D. 1877, at 10 o'clock a. m. of said day, then and there to testify and give evidence on behalf of the plaintiff in a suit pending in the circuit court of the United States for the district of Colorado, wherein The United States is plaintiff and David H. Moffat, jr., is defendant.

Hereof fail not, under penalty of what may befall you thereon.

Witness my official signature, at Cleveland, this 30th day of June, A. D. 1877, and in the 101st year of the Independence of the United States of America.

EARL BILL, *Clerk.*

(Endorsed:) N. D. O., ss:

On the 30th day of June, 1877, I delivered a true copy of this writ to the within-named Gleason F. Lewis, at Cleveland, Ohio; the within-named William E. Lewis not found.

(Signed) N. B. PRENTICE,
U. S. Marshal,
By JOHN ODELL, *Dep.*

Service, 50.

(Endorsed:) No. . United States circuit court, northern district of Ohio. Plaintiff's subpœna. United States vs. David H. Moffat, jr., term, 18 . Returned and filed 18 . , clerk.
, attorney.

73 *Affidavit.*

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA
vs.
DAVID H. MOFFAT, JR. } No. 9.

DISTRICT OF COLORADO, *ss:*

Lucien Peyton, being duly sworn, says that he is the agent of the United States, the plaintiff in the above-entitled cause, in the preparation for trial and conduct of the said suit; that he knows who are material witnesses for the United States in said cause; that he is advised by the counsel for the United States, and verily believes, that the testimony of Gleason F. Lewis and William E. Lewis, at present of Cleveland, Ohio, is material and necessary for the plaintiff, the United States, in the prosecution of such cause; that the said Gleason F. Lewis and William E. Lewis live and reside at the city of Cleveland, in the State of Ohio, more than one hundred miles from the city of Denver, in the State of Colorado, where the court at which deponent expects the said cause to be tried is to be held, and where the said cause is pending.

(Signed) L. PEYTON.

Subscribed and sworn to before me this 22nd day of June, A. D. 1877.

(SEAL UNITED STATES CIRCUIT COURT DISTRICT OF COLORADO.) (Signed) EDWARD F. BISHOP,
Clerk Circuit Court U. S., District of Colorado.

(Endorsed:) United States vs. David H. Moffat, jr. Affidavit.

74 *Notice to take depositions.*

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA
vs.
DAVID H. MOFFAT, JR. }

Please take notice that the depositions de bene esse of Gleason F. Lewis and William E. Lewis, of Cleveland, Ohio, who reside more than one hundred miles from the city of Denver, in the State of Colorado, where the court at which the above-entitled cause will be tried is to be held, will be taken, to be read in evidence at the trial of the said cause on the part of the plaintiff therein, before Earl Bill, clerk of the circuit court of the United States for the northern district of Ohio, at his office in the United States court-house in the city of Cleveland, in the State of Ohio, on the 2nd day of July, 1877, at 10 o'clock in the forenoon of that day; and said taking of said depositions will be continued from day to day at the same place until completed, at which time and place you are

hereby notified to be present and put interrogatories to the said witnesses if you shall think fit.

Dated the 22nd day of June, 1877.

Yours, &c.,

(Signed)

G. G. SYMES AND
W. S. DECKER,
Solicitors and Counsel for the United States.

To ALFRED SAYRE, Solicitor for Defendants, and BUTLER and WRIGHT, of Counsel.

STATE OF COLORADO,
County of Arapahoe:

Frank W. Owers, being duly sworn, says that on the 22nd day of June, 1877, he personally served on Hugh Butler, within named as one
75 of the counsel for the defendant, at 4.30 p. m. of said day, a true and correct copy of the above notice by delivering the same to him personally and leaving the same with him, and that he, the said Owers, is over 21 years of age and competent to be a witness in the within-name' cause.

(Signed)

FRANK W. OWERS.

Sworn to and subscribed before me this 22d day of June, 1877.

[NOTARIAL SEAL.] LEWIS C. GOLDSBOROUGH,
Notary Public.

(Endorsed:) 9. In the United States circuit court. United States vs. D. H. Moffat, jr. Notice to take depositions of Gleeson Lewis and William Lewis.

Order by comm'r for examination.

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA }
vs. }
DAVID H. MOFFAT, JR. }

Let Gleeson F. Lewis and William E. Lewis, the witnesses named in the annexed affidavit, be examined de bene esse before me, Earl Bill, clerk of the circuit court of the United States for the northern district of Ohio, on the part of the plaintiff, at my office in the United States court-house
76 in the city of Cleveland, in the State of Ohio, on the 2nd day of July, 1877, at 10 o'clock in the forenoon, and let the said examination continue from day to day until completed.

(Signed)

EARL BILL,
Clerk of the Circuit Court of the United States for the Northern District of Ohio.

(Endorsed:) 9. In the United States circuit court. United States vs. D. H. Moffat, jr.

Deposition.

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES OF AMERICA }
vs. }
DAVID H. MOFFAT, JR. }

Deposition of witnesses taken by and before Earl Bill, clerk of the circuit court of the United States for the northern district of Ohio, at his office in the United States court-house, in the city of Cleveland, in the State of Ohio, on the 2nd day of July, A. D. 1877, to be used and read in evidence in the above cause. Present on behalf of the plaintiff, Edward S. Meyer, esq., assistant district attorney of the United States for said last-named district.

GLEASON F. LEWIS, of Cleveland, Ohio, being by me first duly cautioned and sworn, deposes and says as follows:

77 Ques. 1 (by plaintiff's counsel). State your age, occupation, and present place of residence, distance of your residence from the city of Denver, State of Colorado.

Ans. I am 54 years of age; land-warrant broker by occupation, & live in Cleveland, at least 1,000 miles from said Denver.

Ques. 2. Were you the owner of any amount of Florida agricultural college scrip on or about the months of April, May, and June, 1873?

Ans. I was the owner of all the agricultural college scrip, amounting to 90,000 acres, and considerable portions of it during those months.

Ques. Did you sell and deliver any of such scrip to Daniel Witter, of the city of Denver & State of Colorado?

Ans. I did sell him a portion of it & delivered the same through the Colorado National Bank at Denver.

Ques. State the numbers of the said agricultural college scrip which you sold and delivered to said Daniel Witter, as aforesaid, in the year 1873.

Ans. Nos. 33 & No. 180 sent from Cleveland April 25, 1873; scrip No. 29, April 25, 1873; scrip No. 181 & 186, sent from Cleveland April 26, 1873; scrip Nos. 174 & 175, sent April 28, 1873; that is all the numbers that I can now recollect; I think I sold him other scrip, the numbers of which I cannot now recollect by reason of the loss of two of my copy books. I think that all or nearly all the deliveries were made through the Colorado National Bank, whose books will doubtless contain evidence on the subject.

78 Ques. Did you sell, transfer, or deliver to said Daniel Witter, of Denver, Colorado, the following numbered pieces or certificates of agricultural college scrip or land scrip of the State of Florida on or about the months of April, May, or June, 1873, or at any time, namely, Nos. 3, 4, 5, 6, 7, 29, 30, 31, 32, 33, 34, 35, 36, 37, 180, 181, 182, 183, 184, 185, 186, 187, 188, 200, 174, 175, 176, 177, 178, 179, or any of said land scrip? If yea, state the numbers of said land scrip, amount, and time you sold and transferred the same particularly.

Ans. I sold to him and delivered as aforesaid Nos. 3, 5, 6, 7, 31, 32, 34, 35, 36, 177, 178, 179, 176, 182, 183, 184, 185, 187, 188, & 200, &

33, 29, 174, 175, 180, 181, 186. I think I sold him considerable more; I have no doubt about it; I know I sold him more. These are all the numbers which I can state at this time. I think it was all sold during the year 1873, commencing in April of said year.

Ques. You have stated you delivered said scrip to Witter through the Colorado National Bank. Please state as definitely as you can the manner of & condition upon which the delivery was made to the said Witter by said bank.

Ans. When Mr. Witter desired 25 pieces of scrip he would send me a draft for seven hundred dollars, or amount agreed upon, in part payment thereof, on receipt of which I would send 25 pieces of scrip to said bank at Denver, and then upon said Witter's paying to the bank the balance of the purchase-money at the price agreed upon, the bank was instructed to deliver, & did deliver, the scrip in such quantities as he has thus paid for.

79 Ques. From whom did you purchase said land scrip, & who & what officer assigned it to you? State particularly all about this.

Ans. I purchased it from W. D. Blocksham, agent and vice-president & also a director of the Florida Agricultural College, who represented said college as its authorized agent for the sale of said scrip by virtue of a resolution passed by the board of directors of the same & of the executive committee thereof, at Tallahassee, in the State of Florida, on the 18th day of November, 1872, & the transfer thereof to me in January, 1873, being subsequently confirmed by a resolution passed by the executive committee and board of directors of said college, bearing date March 11th, 1873.

Ques. When you sold and delivered as aforesaid to the said Daniel Witter was the name of the assignee written in the assignment on the back of said land scrip, or was the said scrip assigned to you in blank & by you sold and delivered with said assignment still remaining blank as to the name of the assignee? State particularly all ab't it.

Ans. The scrip was all assigned to me with the name and residence of the assignee left blank, and when transferred by me to Witter the name & residence of the assignee remained blank; the transfer was made to Witter simply by delivery of the scrip. By way of explanation I would say that my contract of purchase from Blocksman was of the date

80 of the 26th day of November, 1872, instead of in January, 1873, as above stated.

Ques. State particularly if you sold and delivered to said Daniel Witter land scrip of said college No. 175; if yea, state when, & all the circumstances attending such sale & delivery.

Ans. I did sell to said Witter No. 175 of said scrip, sent it to the Colorado National Bank of Denver for delivery April 28, 1873, & said scrip was delivered to said Witter by said bank, & the receipt thereof acknowledged by said Witter to me, in connection with other numbers of said scrip. The name and residence of the assignee in the assignment of scrip No. 175 was left blank, as heretofore stated.

(Signed) G. F. LEWIS.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, Earl Bill, clerk of the circuit court of the United States within and

for said district, do hereby certify that the above-named Gleason F. Lewis was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed, as above set forth, was reduced to writing by George Wyman in my presence and under my direction, he being a proper person and not interested in the suit, and also in the presence of the said witness, and was subscribed by the said witness in my presence, and was taken at the time and place in the annexed notice specified.

I do further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of the above-mentioned suit.

81 In witness whereof I have hereunto set my hand and the seal of the said circuit court of the United States for said northern district of Ohio this 2nd day of July, A. D 1877.

(SEAL OF THE CIRCUIT COURT OF THE NORTHERN DIST. OF OHIO.)

(Signed) EARL BILL, *Clerk.*

Fees.

Clerk, writing deposition, 14 folios, @ 20c. per fol	$2 80
Issuing subpœna for witness	25
Swearing witness	10
Certifying deposition, 2 folios, @ 15c. per fol	30
Official seal	20
Postage	18
Total	$3 83
Witness' fees	$1 50

(Endorsed:) No. 9. In the circuit court of the United States for the northern district of Colorado. United States of America vs. David H. Moffat, jr. Deposition of Gleason F. Lewis on behalf of plaintiff, opened, published, and filed by me this 7th day of July, A. D. 1877. (Signed) Edward F. Bishop, clerk.

82 And afterwards, and on, to wit, the 4th day of August, A. D. 1877, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

THE UNITED STATES *vs.* DAVID H. MOFFAT, JR., IMPLEADED, &C. } 9. In chancery. To vacate land patent, &c.

At this day comes G. G. Symes, esq., of counsel for the said United States, and the said defendant, by A. Sayre, esq., his solicitor, also comes.

And this cause now coming on to be heard by the court as to certain oral testimony, the hearing of testimony is proceeded with to the hour of adjournment, when the further hearing in this cause is postponed and continued.

And afterwards, and on the same day, to wit, the 4th day of August,

A. D. 1877, and in the said circuit court of the United States, the following other order was had and entered of record in said cause, to wit:

Order.

THE UNITED STATES
vs.
DAVID H. MOFFAT, JR., IMPLEADED WITH, &c. } 9. In chancery. To vacate land patent, &c.

At this day, for good and sufficient reasons to the court appearing, it is ordered by the court that Lucian Peyton, esq., special agent of the United States, deliver to the clerk of this court certain paper writings in his possession, to wit, certain papers from the office of the Commissioner
83 of the Land Office enclosed in envelopes, and numbered on the envelopes, respectively, R. & R., No. 539, 552, 559, 529, 526, 538, 524, 548, 537, 533, 528, 549, 530, 547, 554, 540, 527, 544, 556, 525, 551, 560, 546, 532, 553, 531, 557, 550, 558, and 545, and let the said clerk retain the papers aforesaid in his custody until the further order of the court, and let a certified copy of this order be furnished to the said Peyton.

And afterwards, and on, to wit, the 6th day of August, A. D. 1877, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

THE UNITED STATES
vs.
DAVID H. MOFFAT, JR., IMPLEADED WITH, &c. } 9. In chancery. To vacate land patent, &c.

At this day comes G. G. Symes, esq., of counsel for the said United States, and the said defendant, by A. Sayre, esq., his solicitor, also comes.

And this cause now coming on to be heard by the court as to certain oral testimony, the hearing of testimony is resumed and continued until the hour of adjournment, when the further hearing in this cause is postponed and continued.

84 And afterwards, and on, to wit, the 7th day of August, A. D. 1877, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

THE UNITED STATES
vs.
DAVID H. MOFFAT, JR., IMPLEADED WITH, &c. } 9. In chancery. To vacate land patent, &c.

At this day come again the said parties by their solicitors, respectively: And thereupon the further hearing in this cause is postponed and continued.

And afterwards, and on this same day, to wit, the 7th day of August, A. D. 1877, the following other order was had and entered of record in said court in said cause, to wit:

THE UNITED STATES
vs.
DAVID H. MOFFAT, JR., IMPLEADED WITH, &c. } 9. In chancery. To vacate land patent, &c.

At this day it is ordered by the court, for good and sufficient reasons to the court appearing, that certain paper writings lately introduced in evidence before the court herein, and numbered respectively on the evelopes containing the same as follows: R. & R., No. 539, 552, 559, 529, 526, 538, 524, 548, 537, 533, 528, 549, 530, 547, 554, 540, 527, 544, 556, 525, 551, 560, 546, 532, 553, 531, 557, 550, 558 and 545, be by the clerk delivered to Lucien Peyton, esq., special agent of the United States, and by him retained permanently from the files herein, upon leaving
85 with the clerk to be filed certified copies of the paper writings contained in envelopes numbered R. & R., 526 and 546, as aforesaid.

And afterwards, and on the same day, to wit, the 7th day of August, A. D. 1877, the following additional order was had and entered of record in said court in said cause, to wit:

THE UNITED STATES
vs.
DAVID H. MOFFAT, JR., IMPLEADED WITH, &c. } 9. In chancery. To vacate land patent, &c.

On the motion of G. G. Symes, esq., special counsel for the United States in this cause, to have the time for closing the testimony before the master in chancery, to whom this cause was referred, fixed, and after hearing G. G. Symes for complainant, and Alfred Sayre for defendant, it is ordered that the complainant close the taking of its testimony herein on or before the 17th day of August, A. D. 1877, except as to evidence in rebuttal, and that the defendant close the taking of his testimony herein on or before the 15th day of September, 1877.

And afterwards, to wit, on the 15th day of October, A. D. 1877, came Henry C. F. Jensen, esq., one of the masters in chancery of this court, and filed in said court and in said cause the master's report therein, and the said master's report is in words and figures as follows, to wit:

Report of master.

(Here follows two maps, marked pages 86 & 87.)

88 Circuit court of the United States for the district of Colorado, in the eighth circuit.

THE UNITED STATES OF AMERICA
vs.
DAVID H. MOFFAT, JR. } In case No. 9.

To the honorable judges of the circuit court of the United States for the district of Colorado:

In pursuance of a decretal order of reference made and entered in the

above-entitled causes on the nineteenth day of February, A. D. 1877, by which, among other things, they were referred to me, as one of the masters in chancery of this court, to take the testimony of the plaintiff and defendants in this cause, and to report the same, I, H. C. F. Jensen, one of the masters in chancery of this court, to whom the said matter was referred, do respectfully report that I have been attended by the solicitors of the respective parties, plaintiff and defendants, and have examined all the witnesses which have been produced before me, and they gave the following testimony:

89 And the said D. WEBSTER VAN HORN, of the city of West Las Animas, in the county of Bent, State of Colorado, being of the age of thirty-nine years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy and in said proceedings in chancery aforesaid, I did carefully examine the said D. Webster Van Horn, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. State your name, age, place of residence, and occupation.

Ans. My name is D. Webster Van Horn; 39 years old; residence, West Las Animas; am a merchant.

Int. 2. Do you know the parties to this suit, or each of them; and, if so, how long have you known them respectively?

Ans. I have known the United States about 39 years, and David H. Moffat, jr., about three years.

Int. 3. How long have you lived in West Las Animas, Bent County, Colorado?

Ans. Four years next fall. I have lived in the vicinity of West Las Animas nine years.

90 Int. 4. Have you during the time you resided in said Bent County been acquainted with most of the people living around the vicinity of said town, with the improvements and settlements that have been made from time to time on the public land lying in that vicinity?

Ans. I have.

Int. 5. Do you know the land described as the southeast quarter section No. eight (8), township No. twenty-three (23) south, of range fifty-two (52) west of the sixth (6th) P. M.; and the SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ sec. 8, and S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ & SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 7, tp. 23, range 52 W.; and the SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ & NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ sec. 11, and W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 12, tp. 23 S., of range 53 W.; and the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ & E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 12, tp. 23 S., of R. 53 W.; and the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, sec. 9, tp. 23, R. 52 W.; and lots 1 and 2, and the N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 3, tp. 23, R. 52 W.; and the SE. $\frac{1}{4}$ of sec. 10, tp. 23, R. 52 W.; and L. 2 and 3 and SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, sec. 11, tp. 23, R. 53 W.; lots 3 and 4 and N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 3, tp. 23 S., of R. 52 W.; the SW. $\frac{1}{4}$ sec. 7, tp. 23, R. 52 W.; lot 1 of sec. 5 and frac. and NE. $\frac{1}{4}$ sec. 8, tp. 23 S., R. 52 W.; the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 7, tp. 23 S., of R. 52 W., and SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ and E. $\frac{1}{2}$ of SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ sec. 12, tp. 23 S., R. 53 W.; the SW. $\frac{1}{4}$ sec. 8, tp. 23 S., R. 52 W.; the S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, sec. 3, tp. 23 S., R. 52 W.; the NE. $\frac{1}{4}$, sec. 10, tp.

91 23 S., R. 52 W.; W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ & W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 12, tp. 23 S., R. 53 W.; the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ sec. 4, and NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, and lot 1, of sec. 9, tp. 23 S., R. 52 W.; the SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, and N. $\frac{1}{2}$ of SE. $\frac{1}{4}$, & SE. $\frac{1}{4}$ of SE.

¼ of sec. 9, tp. 23 S., R. 52 W.; the S. ½ of SW. ¼, and S. ½ of SE. ¼, and NW. ¼ of SE. ¼ sec. 11, tp. 23 S., R. 53 W.; lots 3 and 4 in sec. 6, and N. ½ NW. ¼ of sec. 7, in tp. 23 S., R. 52 W.; L. 1 & 2 and NE. ¼ of SE. ¼ of sec. 4, tp. 23 S., R. 52 W.; lot 1, and N. ½ of NE. ¼ and SW. ¼ of NE. ¼ of sec. 11, and lots 1 and 2 of L. 2, in tp. 23 S., R. 53 W. L. 1 and 2 of sec. 6; and N. ½ of NE. ¼ of sec. 7, tp. 23 S., R. 52 W.; L. 2 and 3 and NW. ¼ of SW. ¼ sec. 9, tp. 23 S., R. 52 W.; with reference to where it is situated; that is, can you go upon it and know when you are there by the foregoing description?

Ans. I could not go to the points of the corners of the lots described, but I could find them near enough to know whether there are improvements upon them or not.

Int. 6. Were you acquainted or familiar with this land in the year 1873?

Ans. Yes, sir.

Int. 7. State particularly what you know about there having been, during the year 1873, or before that time, any improvements or settlements of any kind upon the above-described land.

92 Ans. In 1871 or 1872 Mr. Thomas O. Boggs had a one-story frame house about the NE. corner of sec. 11, tp. 23, R. 52 W., and on the river bank in NE. ¼ sec. 2—am not positive, it is about there—the frame 1-story building, put up by Thos. O. Boggs and used for sheep ranches. The SW. ¼ sec. 12, same tp. and range, there was a house which had stood there for a long while; it was occupied by Robert Bent and by his people. It was farming land. During the summer of 1873 there were quite a number of improvements started in secs. 8, 9, and 10, particularly on sec. 10. They were at the winter 1873 and '4 the terminus of the K. P. R. R. There was a small town established there called West Las Animas. Those were all the improvements on the above-described lands in 1873, or before.

Int. 8. State what you know about what the improvements you have mentioned were made for; i. e., with reference to whether they were made by parties seeking to avail themselves of the benefits of the pre-emption laws of the United States.

Ans. I do not know anything about these lands—whether they were occupied for pre-emption or not.

Int. 9. How many quarter sections of land have you referred to as having improvements on in 1873 or 1874?

93 Ans. About sixteen quarter sections.

Int. 10. Name all the parties that you can who put improvements on the land that you have described.

Ans. George Peck and George A. Brown, Charles Jones, C. W. Bowman, Sam'l Shoemaker, Dr. Dennie, R. E. Long, Thos. O. Boggs.

Int. 11. Were you acquainted with most of the people and citizens living in the vicinity or upon any portion of the above-described land during the year 1873, or for several years before that time?

Ans. I was, sir; was acquainted at that time with nearly all the people living in Bent County. I was merchandizing and stock-raising in that vicinity for about six years at that time.

Int. 12. How thickly settled was it in this vicinity and throughout Bent County?

Ans. It was very sparsely settled. There were very few people excepting the people living in Las Animas.

Int. 13. Did you know the following-named men or persons, or either of them, or were any of them—namely, Eli Turner, Henry D. Sampson, Jacob Linden, Arthur McLane, Philip Quinlin, Amos R. Howe, Philip Johnson, Samuel A. Long, James Rogers, Samuel R. Bruce, Richard
94 Seymour, Jas. C. Hall, Caleb Wilson, Orton Spencer, Charles N. Clark, Michael Quinlin, Chas. R. Day, S. Sims, Anson Beek, Orson R. Peasley, Samuel Cutler, Simon D. Parker, and James Irwin—living in, or near, or upon, or in the vicinity of the foregoing-described land in the years 1873 and 1872?

Ans. I have no recollection of those parties or any of them.

Int. 14. State what you know about any of the foregoing-named persons living in or near that vicinity at any time during the year 1872, 1873, or before that time.

Ans. I have no recollection of any of the men by those names. In 1872 those lands were entirely unoccupied, except by Mr. Thos. O. Boggs, who occupied the lands as a sheep ranche.

Int. 15. State what you know about any portion of this land being occupied, improved, or settled on at any time during the year 1872 or before.

Ans. It was only occupied as settled by Mr. Thos. O. Boggs. The settlements or town sites that I have named were not made on these lands until 1873.

(Signed) D. W. VAN HORN.

Sworn to by the said D. Webster Van Horn before me, and by
95 him subscribed in my presence, this eleventh day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado, in the Eighth Judicial Circuit, of the Circuit Court of the United States of America.

The further taking of these depositions is now here adjourned until tomorrow, Thursday, the 12th day of July, A. D. 1877, at the hour of 9 o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery, Dist. Colorado, Eighth Judicial Circuit, of the Circuit Court of the U. S. of America.

The taking of these depositions is now here resumed pursuant to adjournment, this twelfth (12th) day of July, A. D. 1877, at the hour of 9 o'clock a. m. Same counsel present as of yesterday.

And the said THOMAS O. BOGGS, of the county of Bent, in the State of Colorado, being about the age of fifty-five (55) years, and having
96 been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, or the proceedings in chancery aforesaid, I did carefully examine the said Thomas O. Boggs, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. What is your name, age, residence, and occupation?

Ans. Thomas O. Boggs; age, 55 years; Bent County, Colorado; stock-raising and farming.

Int. 2. Do you know the parties to this suit, or either of them; if so, how long have you known them respectively?

Ans. I know Mr. Moffat, jr., since this suit commenced and have known the United States a good while.

Int. 3. How long have you lived in, or in the vicinity of, Las Animas, in the county of Bent, in the State of Colorado?

Ans. I have been there off and on before it was a State or Territory, in 1844; it was then in New Mexico; and ever since it has been the Territory and the State of Colorado.

Int. 4. State how well you have been acquainted in that vicinity and in the county of Bent during the past ten years.

Ans. I think I knew most everybody in that vicinity and in the county of Bent, except in the settlements, in the towns, in 1873; there may
97 have been some people which I did not know. I think I knew everybody in the town of Las Animas, in the county of Bent, up to 1873, when the towns were settled, and then there may have been some people in the towns West Las Animas and East Las Animas and I did not know.

Int. 5. Do you know the following-described land, namely: The SW. ¼ NW. ¼ sec. 8, and S. ½ NE. ¼ and SE. ¼ and NW. ¼ sec. 7, tp. 23, R. 52 W.; the SE. ¼ of NE. ¼ and NE. ¼ of sec. 11 and W. ½ of SW. ¼ sec. 12, tp. 23 S., R. 53 W.; S. ½ NW. ¼ and E. ½ SW. ¼ sec. 12, tp. 23 S., R. 53 W.; the SW. ¼ of SW. ¼ and E. ½ of SW. ¼ and SW. ¼ of SW. ¼ of sec. 9, tp. 23 S., R. 52 W.; lots 1 and 2, and N. ½ SE. ¼ sec. 3, tp. 23 S., R. 52 W.; the SE. ¼ of sec. 10, tp. 23 S., R. 52 W.; lots 2 and 3, and SE. ¼ of NW. ¼ and the S. ½ of the SW. ¼ sec. 11, tp. 23 S., R. 53 W.; lots 3 and 4, and N. ½ SW. ¼ sec. 3, tp. 23 S., R. 52 W.; the SW. ¼ sec. 7, tp. 23 S., R. 52 W.; lot 1 of sec. 5 and fraction and the NE. ¼ of sec. 8, tp. 23 S., R. 52 W.; the SW. ¼ of SE. ¼ sec. 7, tp. 23 S., R. 52 W. and SE. ¼ of NE. ¼ and E. ½ of SE. ¼ sec. 12, tp. 23 S. R. 53 W.; the SW. ¼ sec. 8, tp. 23 S., R. 52 W.; the S. ½ of SE. ¼ and S. ½ of SW. ¼ sec. No. 3, tp. 23 S., R. 52 W.; the NE. ¼ sec. 10, tp. 23 S., R. 52 W.; the W. ½ of NE. ¼ and W. ½ SE. ¼ sec. 12, tp. 12 S., R. 53 W.; the SE. ¼ of the SE. ¼ of sec. 4 and NE. ¼ of NE. ¼ and lot 1 sec. 9, tp. 23 S., R. 52 W.; the SE. ¼ of NE. ¼ and N. ½ of SE. ¼ and SE. ¼ SE. ¼ sec. 9, tp. 23 S., R. 52 W.; the SE. ¼ of SW. ¼ and S. ½ of SE. ¼ and NW. ¼ of SE. ¼ sec. 11, tp. 23 S., R. 53 W.; lots 3 and 4 in sec. 6 and N. ½ of NW. ¼ sec.
98 7, tp. 23 S., R. 52 W.; lots 1 and 2 in NE. ¼ SE. ¼ sec. 4, tp. 23 S., R. 52 W.; lot 1 and N. ½ of NE. ¼ and SW. ¼ SE. ¼ of sec. 11 and lots 1 and 2 sec. 2, tp. 23 S., R. 53 W.; lots 1 and 2 sec. 6 and N. ½ of NE. ¼ sec. 7, tp. 23 S., R. 52 W.; lots 2 and 3 and NW. ¼ SW. ¼ sec. 9, tp. 23 S., R. 52 W.—that is, do you know where it is situated geographically?

Ans. I do know where all and every portion of it is; I have herded sheep and cattle over it for the last twenty years; and I built the first house that was ever built on it, and different corrals; I can see over all of that land, for I live on a raised eminence, and can see a good deal of land beyond it; have been living there permanently for ten or twelve years.

Int. 6. Now state what you know about any person or persons having settled upon or made any improvements of any kind upon said land, or

any portion of it, at any time during the year 1872, or before that time or since.

Ans. Before 1873 there was no person but myself on any part of the land. In the month of March, 1873, there were several improvements made by the following persons, with the intention of holding claims in case it became Government lands: Jesus Luna, Pedro Luna, Cornelius Gilday, Wm. Walker, C. A. Boggs, Sam'l E. Shoemaker, Father Pinto, J. G. Cowen, George Peck, John Carroll, James Carter, Green McCullom, N. H. Pier, George A. Brown, and Dr. Dennie, and Charles
99 W. Bowman. These parties settled there in 1873, and most of them had an understanding with V. St. Vrain, who was the administrator of Ceran St. Vrain, that in case he got the lands he was to give them deeds; he has issued deeds to some of these parties; to Father Pinto some land was given—to the Catholic Church and school—by St. Vrain; and the priest, Father Pinto, built a good building on it; we all helped him build it; the Kit Carson children also had a claim on these lands, and I think the claim was filed in the Pueblo land office by Bradford, Chilcott and McDonnell, who, I think, were the attorneys; and there was also a claim filed by Wilbur F. Stone, as attorney for Hughes. These claims, that is the claim to Father Pinto, Bowman C. Gilday, Jesus Luna, Pedro Luna, W. Walker, and the Carson lands, and C. A. Boggs, were claimed under the Vigil St. Vrain grant.

(Alfred Sayre, esq., attorney for D. H. Moffat, jr., objects to the testimony in regard to the derivative claims, and moves to expunge it, because it is not the best testimony establishing the existence of such claims.)

Int. 7. Do you know, or have you known, the following-named
100 persons, namely, Eli Turner, George Taylor, Henry D. Sampson, Jacob Linden, Arthur McLane, Philip Quinlin, Amos R. Howe, Philip Johnson, Samuel A. Long, James Rogers, Samuel R. Bruce, Richard Seymour, James C. Hall, Caleb Wilson, Orton Spencer, Charles N. Clark, Michael Quinlin, Charles R. Day, S. Sims, Anson Beck, Orson R. Peasley, Samuel Carter, Simeon D. Porter, James Irwin, residing upon or in the vicinity of the foregoing-described land during the years 1871, 1872, or 1873?

Ans. I do not know any of them.

Int. 8. If those parties, or any of them, had lived in or around that vicinity, what were your opportunities for knowing them?

Ans. I was over the ground most every day, and did not see them; the country was not so thickly settled then but that I should have discovered them; there never were any men by such names on the land, to my knowledge.

Int. 9. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or matters in question in this cause? If yea, set forth the same fully and at large.

(Defendant's counsel objects to the last int. for the reason that it
101 is too general and not adapted to the examination of the witness, when counsel have full opportunity to examine the witness specifically and particularly as to facts pertinent to the issues.)

Ans. Wilbur F. Stone and Mr. Edgerton, who is connected with the

Kansas Pacific R. R., came over there. At that time there was quite an excitement as to where the terminus of the K. P. R. R. should be. Edgerton and Stone told St. Vrain that if they could get the land in that vicinity they could use their influence to have the terminus of the road at that time, which was then at a short distance of the Arkansas River, established on some part of this tract of land. One party wished the terminus to be at the old town of Las Animas, the other party wished it to be on the lands above the bottom of the creek, now called West Las Animas. Several gentlemen connected with the K. P. road came to my house, in company with R. N. Moore, John W. Powers, and rode over this county to see whether it was suited for a location of a town site. The gentleman of the K. P. road, Mr. Bowen, pointed it off, NE. of my house, and said that would be a good place. I remarked to Mr. Stone that I had located some land in that bottom for the Kit Carson heirs, who claimed land under the Vigil St. Vrain grant. Mr. Stone then

102 spoke up; Stone, St. Vrain, and Edgerton were then all three there.

Mr. Stone told me that he had already filed as attorney of one Hughes, a derivative claim on the same grant he mentioned; then I asked him how persons could file on that land, as an order had been made by the land office, as was understood, that no filings could be made on any derivative claim. He then told me that he could withdraw his claim, and that then filings could be made by persons on the land.

(OBJECTION. Defendant's counsel objects to the answer last above given for the reason that the same is secondary evidence, hearsay testimony, and irrelevant.)

Int. 10. Who was the man St. Vrain, that you have mentioned?

Ans. Vicenta St. Vrain was a son of Ceran St. Vrain, and administrator of the estate of Ceran St. Vrain.

Cross-interrogatories:

Cross-int. 1. You speak of certain parties, one of whom desired that the terminus of the road should be at the old town of Las Animas, and the other that it should be at a point above; state what parties you mean.

Ans. Stone and Edgerton were in favor of the upper place, and the other, which we called the Craig party, of the old town.

Cross-int. 2. What were the preferences, if you know, of Vin-

103 centa St. Vrain?

Ans. He preferred the upper part.

Cross-int. 3. At the conversation you have narrated between yourself and Edgerton, Stone and St. Vrain, was Mr. Bowen present?

Ans. He was not at that time.

Cross-int. 4. Did this conversation occur at the time you say, when Mr. Bowen visited your place with others?

Ans. I don't think he was present; he was not at my place.

Re-examination:

Int. 1. Who was Mr. Bowen?

Ans. He was supposed to be some official of the Kansas Pacific R. R. I do not know what he was.

(Signed) THOMAS O. BOGGS.

Sworn to by the said Thomas O. Boggs before me, and by him subscribed

in my presence, this twelfth day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court for the District of Colorado, in the Eighth Judicial Circuit of the United States of America.

104 And the said LUKE CAHILL, being about 27 years of age, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy and in the proceedings in chancery aforesaid, I did carefully examine the said Luke Cahill, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Luke Cahill; age, 27 years and six days; residence, East Las Animas; am by occupation a cattle raiser, and at present assessor of Bent County.

Int. 2. Do you know the parties *of* this suit, or either of them? If so, how long have you known them respectively?

Ans. I know them both; have known the United States about thirteen years, and the defendant, David H. Moffat, jr., since this case commenced; I do not exactly remember the time.

Int. 3. How long have you resided at or near Las Animas?

Ans. It will be ten years, on the eighth day of next November. I lived directly north of West Las Animas, on the north side of the Arkansas River, about 200 or 300 yards from north side of Arkansas River, from February 20th, 1870, until the 16th day of June, 1873; from there I went to the south side of the Arkansas River, right close
105 south ¾ miles of Fort Lyon. I served in the army, before I went to any of those places, from the 8th day of November, 1867, to the 4th day of May, 1869. I had cattle on this same land which is in dispute in this suit, in partnership with D. Webster Van Horn, from March 1st, 1870, to June 16, 1873.

Int. 4. State how well acquainted you have been during the last three to six years in and around the town of Las Animas, and in the county of Bent, and particularly, how well acquainted you are up to June, 1873.

Ans. During the last three years I know all the tax-payers in Bent County, that is such as live there. I knew all the settlers of Bent County, pretty nearly all, some three years before that; being some six years—from 1870 to the present time; I know pretty nearly all the people in Bent County.

Int. 5. Did you hear the testimony given by and the interrogatories propounded to the witnesses Van Horn and Boggs?

Ans. I heard Mr. Van Horn's and Mr. Boggs' testimony, all.

Int. 6. Do you know the land described in interrogatory 5 (five), propounded to Mr. Van Horn, and the int. to Mr. Boggs?

Ans. I do.

Int. 7. Do you know that land with reference to its situation geo-
106 graphically; that is, could you, from the description given, go upon it?

Ans. From 1870 to the present time I lived adjoining the land for

over three years, and the Arkansas River divided the land I was living on and this same land. I was on the land three or four times every month ever since; I rode over the land three or four times a month, more or less, ever since I know the land.

Int. 8. State what you know about there having been any settlements made or improvements put upon said land at any time since 1870.

Ans. Thomas O. Boggs had a sheep camp, a house, and some corrals on the place, and herded sheep all over that land from 1870 up to 1873; they sheared the sheep there also. Some time in May, 1873, there were some foundations laid of several little houses; whose they were I cannot say, except from hearsay.

Int. 9. State particularly all that you know with reference to any person or persons having settled or made improvements upon the said land at any time before the month of May, 1873.

Ans. I don't know of any improvements before that time except this house and corral of Boggs'.

Int. 10. Did you hear the names called in interrogatories number five (5) propounded the witness Boggs, and the names mentioned in
107 interrogatory number five (5) propounded to the witness Van Horn?

Ans. I did.

Int. 11. State what you know about any of these persons having settled upon or in the vicinity of this land mentioned, or of residing in or near that vicinity.

Ans. I never knew of any parties of that name in Bent County at that time or now.

Int. 12. Have you ever heard of any parties of that name, or either of those names, in Bent County?

Ans. I never heard of them, and if they were in Bent County I was bound to know it.

Int. 13. Did you hold any official position in Bent County; if so, state what office, and when it was?

Ans. I have held the position in Bent County as assessor of that county for the past three years, and hold it yet.

Int. 14. If you know anything further about these parties or the title to this land mentioned you may state it.

(Defendants' counsel objects to the foregoing question, for the reason that it is too general, and does not call the attention of the witness to any issue of fact in this case.)

Ans. There is something else I omitted to say. In regard to these foundations and little houses first put up there in May, 1873, they are
108 not in existence to-day, and have not been for two years.

Int. 15. Do you know the parties who put the little houses on the land which you mention? If so, state their names, and, as near as you can, the time when they put them there.

Ans. They were put there in May, 1873; the parties I am not personally acquainted with; I have heard their names; they are citizens living around there; if I heard their names I could call them over; some of the gentlemen here, witnesses in this case, had their foundations there.

Int. 16. Did any of the parties named in the interrogatories propounded to witnesses Van Horn and Boggs put any of the houses or shanties you have referred to upon that land?

Ans. I believe they did; from my own personal knowledge I don't know.

Int. 17. I am speaking of these other parties—those named over before.

Ans. If you mean the individuals referred to in said interrogatories, I don't think they ever did put any buildings there.

Int. 18. State what opportunity you had to know whether or not any of the said parties referred to in the said interrogatories to Van Horn and Boggs put buildings upon said land.

109 Ans. I was riding over the land almost every day, and they could not have been there; if they was there I was bound to know it; I was over that land almost every day.

(Signed) LUKE CAHILL.

Sworn to by the said Luke Cahill before me, and by him subscribed in my presence, this twelfth (12th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the United States Circuit Court within and for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

And the said ROBERT K. VANDIVER, being about the age of thirty-four years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy or the proceedings in chancery in the cause above entitled, I did carefully examine the said Robert K. Vandiver, and he did thereupon depose, testify, and say as follows, viz:

Robert K. Vandiver sworn on behalf of the plaintiff:

110 Int. 1. State your name, age, occupation, and residence.

Ans. My name is Robert K. Vandiver; I am thirty-four years old; I keep a dining-hall on the Atchison and Topeka Railway; live in West Las Animas, Bent County, Colorado.

Int. 2. How long have you resided in West Las Animas, county of Bent, Colorado?

Ans. Well, I have resided in West Las Animas since the spring of 1874. I have lived in Bent County since 1869, before that was a county.

Int. 3. How generally acquainted have you been with the people living in Bent County since 1869?

Ans. Well, I think that up to the spring of 1874 I knew most every man in Bent County.

Int. 4. From what time?

Ans. From February, 1869, up to March 1st, 1874.

Int. 5. What was your business in that county during that time?

Ans. Well, sir, various occupations. I lived in old Las Animas from January, 1869, until 1871. I then moved up the river about 16 miles, at the upper end of this land in dispute, and remained there about two years—nearly two years. While I was in East Las Animas I was deputy county clerk and justice of the peace there. When I moved up the river I had some stock.

111 Int. 6. Did you hear the description or descriptions of the land referred to in interrogatories propounded to the witnesses Van Horn and Boggs?

Ans. I did.

Int. 7. Do you know that land from the descriptions you heard read off and written down in said interrogatories?

Ans. I do not know that I could pick out each corner of the land, but I could go over the whole of it, knowing the piece of land in dispute, as I have traveled over the land off and on since 1869.

Int. 8. Do you know where it is situated geographically sufficiently to enable you to go upon it and pass over it, or any portion of it?

Ans. Yes, sir.

Int. 9. State what you know about there having been any settlements made upon or improvements put upon the said land at any time from 1870 up to the summer of 1873.

Ans. All the improvements there was on the land up to that time was a small frame house owned by Thomas O. Boggs and some little foundations that were put there in May, 1873. There was no other improvements on the land except these I have mentioned.

Int. 10. State fully your opportunities from 1870 to the summer of 1873, or since, for knowing who, if any one, lived upon or improved
112 any portion of said land.

Ans. Well, I have been over the land, have been over it a great many times; in fact while I lived upon the ranche I used to pass down to East Las Animas over this same land every week, sometimes two or three times a week; and there was no improvements there, and never had been any up to the time that town was started there except what I have mentioned.

Int. 11. State what you know, if anything, about any improvements or settlements having been put or made upon the said land or any part of it during the summer of 1873.

Ans. Well, in the spring of 1873—May—I went to Pueblo and pre-empted a piece of land on the upper edge of this claim I told you about. The land at that time had always been considered a derivative claim under Hughes; that was the reason there was no houses built on it before. Mr. George Peck and other parties asked me when I went to the land office to prove up on my place to see how the land lay, so as to file a pre-emption on a certain piece, and they would build a foundation upon it. I made inquiries when at the land office, and they told me that this was still a derivative claim—this was the 23rd day of May, 1873, that I
113 was at the land office—and that there could be no filings made on this land. I returned to old Las Animas and told Mr. Peck, but during that time he had put a foundation; probably there was 4 or 5 foundations put up while I was gone, little foundations of frame; and after they had put up these foundations several other parties, Mr. Cohn, and George A. Brown, and Mr. Shoemaker, and Dr. Deney, and other parties had built little shanties round over this land. I think it was some time in June they built them.

(Defendants' counsel object, to the foregoing answer, and moves that it be stricken out, for the reason that the same is irrelevant, and gives hearsay and secondary testimony, and is not responsive to the question asked.)

Int. 12. Who, if any one, did you inquire of at the land office, or from whom did you get your information in regard to that land being covered by the Hughes derivative claim?

Ans. Well, sir, I got it generally from all of them, I may say.

Int. 13. Give the names.

Ans. One of them was Mr. Williams, the clerk in the land office, another Mr. Stanton, and another Mr. Cook.

114 Int. 14. Now state what conversation you had with Williams, Cook, and Stanton regarding this land being covered by a derivative claim at the time when that conversation took place.

(Objected to by the defendants' counsel for the reason that it calls for a conversation not between the parties to the suit or either of them and this witness.)

Ans. I think about the 21st (twenty-first) of May, 1873, I received a letter from Wilbur F. Stone, telling me if I wanted to hold this land or save it I had better come to Pueblo, and the probability was it was outside of this limit of the land. I went to Pueblo, and went to the land office and saw Williams and Stanton. I explained the matter to them, and told them I heretofore thought my claim was in this derivative claim of Hughes, but that I saw that the filings of the land office had only covered one 80 of the land, and I asked Stanton what I should do about it. I explained the matter to him as thoroughly as I could. I went there for the purpose of pre-empting this piece of land of mine, 160 acres of it. I told him that I understood the reason it had not been covered by this de-

115 rivative claim was that the land-office fee of fifty dollars had not been paid, and that I was willing to pay it. He said it was not necessary; that the claim had been filed by Wilbur F. Stone, and that I could go home contented, and my land could not be touched by anybody. So I went down town and saw the parties I went to the land office with, and told them I was ready to go home next morning; but in the evening afterward I went up and saw Wilbur F. Stone, and stated what I had said to Mr. Stanton, and his replies to me. He said the best thing I could do would be to come 'round in the morning, and that he would go with me to the land office and look into it. I went around in the morning, and Mr. Stone went with me to the land office. In the land office we saw Cook, and they went into the other room and had some conversation together, and then brought out the plat of this land and showed it to me with the lines marked on it, as I said before, with all this land of mine thrown out but this eighty acres. I asked them how that was, and they said that the lines had been drawn through mistake, and had not

116 covered my land, and told me that I could pre-empt 160 acres, and file on the other 160 by leaving out this 80 acres. Part of this land I did not want, and on the plat showed a piece of land of 40 acres that I had always claimed, and had a cabin on. There was a filing made on that land by Philip Lauder as a homestead. I showed it to the gentlemen and asked them how it was that Lauder could file on this land that I had always claimed, and I could not touch it. They told me that it was done through mistake, and that he, Lauder, would have to withdraw his claim or lose his filing fees on the land, and told me to state to the gentleman to that effect. This 80-acre plot I gave up, and took a piece of land in order to get the amount that I wanted.

Int. 15. Did you hear the names of the parties called contained in interrogatory number thirteen (13) propounded to the witness D. Webster Van Horn, and in interrogatory number seven (7) propounded to the witness Boggs?

Ans. Yes, sir; I heard the names.

Int. 16. State what you know about any of the said named parties having made any settlement upon or put any improvements upon the said land you have mentioned, or any portion thereof, at any time.

117 Ans. There never was any improvements put on the place, the land mentioned, by any of these parties, excepting those I have mentioned before.

Int. 17. Did any of these parties named ever live or settle upon or near this land?

Ans. Well, sir, I am satisfied they never did. I think I know, or did know at that time, every settler in Bent County; there might have been a few Mexican's names I could not remember, but none on that land.

Int. 18. Did you ever have any conversation with the defendant Mr. Moffat, or with the receiver, Cook, or the register, Stanton, or the clerk in their office, Williams, regarding any filing upon or entry of any portion of this land mentioned in your deposition, other than what you have stated as having with Cook, Stanton, and Williams at this time?

Ans. I never had, sir.

Int. 19. Have you held in Bent County any official position? If so, state when and the office you held.

Ans. I was deputy county clerk and justice of the peace. That was in 1870.

Int. 20. Do you know Mr. Edgerton or Mr. Carr, officers of the Kansas Pacific Railway?

Ans. Yes, sir; I know them both.

118 Int. 21. Did you ever have any conversation with them, or either of them, regarding the pre-emption or entry or ownership of any portion of this land mentioned?

(Objected to by defendants' counsel for the reason that it calls for conversation with Mr. Edgerton, who is not a party to this suit.)

Ans. No, sir; I never had any conversation with Mr. Carr. Mr. Edgerton asked me or tried to persuade me to locate in this new town of West Las Animas. I said to him, "How can we get a title to the lots there?" That was before this matter had been brought out. I told him I did not want to build unless I was sure of the title. And his reply to me was simply this: "You go on and build. I will assure you that you will be safe. We will get a title, if we have to get it through a nigger." And that is about all there was said between us.

(Answer objected to by defendants' counsel for the reason that it states irrelevant facts.)

Int. 22. State the time that this conversation occurred, and where.

Ans. It occurred in the town of West Las Animas, I think some

119 time along in October; I forget the exact date; some time in October, 1873.

Int. 23. If you know anything more regarding the settlement upon or improvements put upon this land, or regarding the parties that you have been speaking about connected with this matter, you may state it.

Ans. There is nothing that I can tell from my own personal knowledge.

(Signed) ROBERT K. VANDIVER.

Sworn to by the said Robert K. Vandiver before me, and by him subscribed in my presence, this twelfth (12th) day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the U. S. Circuit Court within and for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

The further taking of these depositions is now here continued until Friday, the 13th day of July, A. D. 1877.

Friday, July 13, 1877. The taking of these depositions is now here resumed at the hour of 9 o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court.

120 And the said G. M. WOODWORTH, of the town of West Las Animas, Bent County, State of Colorado, of the age of thirty-seven (37) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy or the proceedings in chancery aforesaid, I did carefully examine the said G. M. Woodworth, and he did thereupon depose, testify, and say as follows, viz:

G. M. Woodworth, sworn on behalf of plaintiffs.

Int. 1. State your name, occupation, age, and residence.

Ans. G. M. Woodworth; thirty-seven years old; livery business; West Las Animas, Bent County, Colorado.

Int. 2. How long have you resided at West Las Animas, in Bent County, Colorado?

Ans. Resided in Bent County since March, 1873.

Int. 3. How well acquainted have you been in that county, and particularly in the vicinity of Las Animas, since that time?

Ans. I think I know every person in the vicinity of Las Animas since that time.

121 Int. 4. Did you hear the descriptions of the land called over which is in the interrogatories numbered propounded to the witnesses Van Horn and Boggs?

Ans. Yes, sir.

Int. 5. Do you know or are you acquainted with that land?

Ans. Yes, sir.

Int. 6. How long have you known that land?

Ans. Since the last part of April, 1873.

Int. 7. State what you know about there having been any settlement upon or improvements put upon said land in April, 1873.

Ans. I passed over that land first in the last part of March, 1873; there was no improvements on it at all, except two sheep ranches belonging to Thomas O. Boggs. I went on to that land with some emigrants or land-buyers or land-viewers the last part of April, 1873; there was still no improvements on it except of Boggs' two shanties; I went all over it.

Int. 8. Do you know of any improvements having been put upon said land or settlements during the last part of April or in the month of May, 1873? If so, state what improvements, and who put them there.

Ans. Mr. George Peck made improvements the last part of May, I think, in section nine; George A. Brown, in section ten; S. E. Shoe-
122 maker, in section ten; Dr. Deney, in section ten; John Carrol and a Mr. Pier, both on one quarter in section ten; John W. Cowan, in section three; I won't be certain about that section, but it was north of section ten; Erastus Smith, adjoining quarter to Mr. Cowan; Ed. Shear, I think, in section three, and Charles P. Leop, I think, in section three, but not certain; there was a Catholic priest located a quarter about that time, I think a little later perhaps than these, I don't know in what section; William R. Walker, section eight or nine, I am not positive; C. Gildy, in section eight, I think; that is all the parties I remember that had foundations there in May and June.

Int. 9. State what you know, if anything, about these improvements remaining there; how long they remained, or how long the parties remained upon the land, if at all.

Ans. The most of the parties remained there for a year; however, some of the buildings were never completed; the men who owned the foundations on the land lived in town; others were finished and men lived there and occupied them; some are occupied yet.

Int. 10. Did you hear the names called over which are contained in interrogatories numbered propounded to the
123 witnesses Van Horn and Boggs in this case?

Ans. Yes, sir.

Int. 11. State what you know, if anything, about these parties, or any of them, having made any settlement upon or put any improvements the said land or any portion of it at any time.

Ans. I am satisfied that there were no parties of that name in Bent County, or in that part of Bent County, after the first day of April, 1873, nor have there been to the present day.

Int. 12. State what opportunities you had to know whether or not such parties lived in or near that vicinity or made any improvements or settled upon said land.

Ans. I owned the only livery stable in April, May, & June, 1873; consequently was called upon to furnish teams to view that land by all newcomers that came into the county, and part of the time drove the teams myself, in order to gain information about the lands. I have been on every quarter-section of the land as early as July, 1873; have been at most of the corners with different parties, and have furnished most of the teams to haul the lumber to build these foundations, by the parties. I have named
124 Int. 13. Do you know David M. Edgerton?

Ans. Yes, sir.

Int. 14. How long have you known him?

Ans. Since some time in May, 1873.

Int. 15. Did you have any conversation with him in May or June, 1873, regarding this land?

Ans. No, sir. I have later, at a later date.

Int. 16. Did you have at any time any conversation with him regarding this land? If so, state when and where it was and what was the conversation.

(Defendants' counsel objects to the question for the reason that it calls for a conversation not between the parties in this suit.)

Ans. Some time in August, 1873, before the town was laid out, but when it was proposed to be laid out, Mr. Edgerton proposed to me to move my stable from East Las Animas to what was then called the "new town," without a name. I told him I did not like to move, from the fact I did not think I could get any title to the land. He told me to go on and move, and if they had not already the title they would get it; that he would guarantee me that my lots should not cost me anything.

Int. 17. Who did he mean by "they?"

125 Ans. I understood him to mean the K. P. Railroad Company, from the fact that he was there doing the principal business that was done for the K. P. company at that time. He mentioned no names, and the understanding was that was a town laid out by the Kansas Pacific Railway Company, or was to be laid out; it was not laid out then.

Int. 18. What position in connection with that railway company, or its officers, did Mr. Edgerton hold at that time?

Ans. Private secretary to Mr. Carr, president of the road.

(Signed) G. M. WOODWORTH.

Sworn to before me by the said G. M. Woodworth, and by him subscribed in my presence, this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado, in the Eighth (8th) Judicial Circuit, of the Circuit Court of the United States of America.

126 And the said GEORGE PECK, of the town of Las Animas, county of Bent, State of Colorado, being about the age of forty-one (41) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy or the proceedings in chancery herein above entitled, I did carefully examine the said George Peck, and he did thereupon depose, testify, and say as follows, viz:

George Peck sworn on behalf of the United States:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is George Peck; age, 41; Las Animas; farming and dairying.

Int. 2. How long have you resided in or near West Las Animas?

Ans. Since about the middle of April, 1873.

Int. 3. Do you know the parties to this suit, or either of them? If so, state how long you have known them respectively.

Ans. I am not personally acquainted with Mr. Moffat, the defendant; I have known him in connection with this suit since the suit was commenced. I have known the U. S., say, thirty-five years.

Int. 4. State how well acquainted you have been since 1873
127 and were during the summer of 1873 in and around the vicinity of Las Animas with the people.

Ans. I was acquainted with most of the people living in that vicinity during the summer of 1873.

Int. 5. Did you hear the description of the land called over contained in interrogatories numbers five (5) propounded to the witnesses Boggs

and Van Horn, and referred to in the evidence of the other witnesses in this case?

Ans. I did.

Int. 6. Do you know that land from its description?

Ans. I do.

Int. 7. Do you know its situation geographically well enough to enable you to go upon it or across it?

Ans. I do.

Int. 8. Did you know it in the spring of 1873?

Ans. I did.

Int. 9. State what you know about there having been any improvements put upon or settlements made upon the said land, or whether there were any before the months of April, May, or June, 1873.

Ans. I was on the land and passed it occasionally until the 22d of May, 1873, when I looked it over carefully with a view of settling upon it, and up to that time I never saw any improvements upon the land except those
128 of Mr. T. O. Boggs, which consisted of a small house, occupied by his herders, and a camp, also occupied by them, and a few corrals for his sheep. On the 23d day of May I commenced some improvements; also my brother, C. D. Peck; and within a few days thereafter there were several other parties took up land and commenced improvements—Samuel Schumaker, Dr. Deney, George A. Brown, and one Pier, on section 10; Mr. Cowan, Charles Leach, in sec. 3; there were others or one other in sec. 3, but I have forgotten who claimed it; it was some party living there; C. D. Peck, in sec. 4; C. W. Bowman, Wm. Walker, S. R. Machlin, and myself, in sec. 9; I cannot be positive about the sections of the other settlers. There was one who has slipped my mind, Simpson was his name, and C. Gildey, of these settlements; I am not sure about the sections. There were two other houses above built by parties with whom I was acquainted, but their names I have forgotten. Later in the summer a Catholic priest built a house on sec. 4. That is all that I believe that I remember.

Int. 10. Have you stated the date when these buildings were put up?

Ans. I stated the date I commenced improvements; these im-
129 provements were commenced from the 25th of May until the 1st of July, 1873; some were in process of building during the summer.

Int. 11. Did you hear the names called over included in interrogatories seven-(7) to Boggs and in thirteen (13) to Van Horn, propounded to the witnesses Boggs and Van Horn, and referred to in the testimony of the other witnesses?

Ans. I did.

Int. 12. State what you know about whether or not there were any such persons living in or near or upon this land at any time during 1872 or 1873 or since.

Ans. I have never known any parties by any of those names.

Int. 13. State what your opportunity was for knowing whether or not any such persons made any settlements upon or put any improvements upon this land in controversy.

Ans. I was over the land very frequently after the 22d of May, 1873, and I am satisfied there were no improvements by any parties bearing those or any of those names.

Int. 14. State what you know about the character of any improvements you have mentioned as having been put upon that land in the spring or summer of 1873, and what became of those improvements?

Ans. The most of them were small, cheap houses; some of them
130 are standing yet; most of them were left standing during the summer, but taken down in the fall of 1873.

Int. 15. If you know anything further particularly relating to the settlement or improvement of this land mentioned, or of the parties named and referred to as being in the interrogatories to Boggs and Van Horn's deposition, you may state it.

Ans. There is nothing more, I think, except the settlement of the town.

Int. 16. You may state anything you know particularly relating to the settlement upon any portion of this land covered by the town of West Las Animas, and when these settlements were made.

(Counsel for def't objects to as irrelevant.)

Ans. The town was laid off on section 10, I think, during the month of September, 1873, and buildings commenced in the town in the latter part of Sept., 1873, as well as I recollect, and a great many buildings were put up during the fall and winter.

Int. 17. State anything you may know about the ownership or claimant of land upon which the town was laid out.

Ans. The land was claimed by George A. Brown, as a settler; but was also claimed or patents were recorded by David H. Moffat, or town
131 company; I am not positive which.

Int. 18. Did you ever have any conversation with any of the officials of the K. P. Railway Company, Mr. Carr or Mr. Edgerton, or others, in relation to that town site, or the ownership or title of the land upon which it was situated?

Ans. I did not.

Int. 19. Did you buy any lots in that town site?

Ans. I did not.

Int. 20. Did you have any given you to put buildings on?

Ans. No, sir; I never had any there.

Cross-examined:

Cross-int. 1. How do you know the patents of the town site were recorded by David H. Moffat, for the town com.?

Ans. I saw it on the county clerk's record.

Cross-int. 2. You mean to say that you saw the patents recorded?

Ans. I saw the record.

Cross-int. 3. That is, all you know about it is that you saw spread on the record what purported to be a record of patents to the town site?

Ans. Yes, sir.

(Signed) GEORGE PECK.

Sworn to by the said George Peck before me, and by him subscribed in my presence, this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,

132 *Master in Chancery within and for the District of Colorado, in the Eighth (8th) Judicial Circuit, of the Circuit Court of the United States of America.*

And the said ALLEN E. CARPENTER, of the town of Las Animas, county of Bent, State of Colorado, being of the age of thirty-one (31) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy, I did carefully examine the said Allen E. Carpenter, and he did thereupon depose, testify, and say as follows, to wit:

Allen E. Carpenter sworn on behalf of the United States.

Int. 1. State your name, age, occupation, residence.

Ans. Allen E. Carpenter; contractor and builder; age, 31; Las Animas.

Int. 2. How long have you resided in West Las Animas?

Ans. Since the last of October, 1872.

Int. 3. How extensive or how well have you been acquainted
133 with the people living in or near West Las Animas during the years 1872, '3, & '4?

Ans. In the year 1872 I was a stranger; during the early part of the year 1873 I became acquainted with a great portion of the people in that vicinity.

Int. 4. What business were you in then?

Ans. The same as at the present time—contractor and builder.

Int. 5. Did you hear the descriptions of the land called off described and mentioned in interrogatories numbered five (5) in Van Horn's and Boggs' depositions, and referred to in the testimony of the other witnesses in this case?

Ans. I heard those to Mr. Boggs.

Int. 6. Do you know that land?

Ans. Yes, sir; I do.

Int. 7. Do you know where it is situated geographically with sufficient definiteness to enable you to go upon it and to tell whether or not there were buildings upon it at any time?

Ans. Yes, sir.

Int. 8. State what you know about there having been any settlement upon or any improvements upon said land during the years 1872 or 1873.

Ans. There were two small cabins in the fall of 1872—Mr. Boggs' sheep camp—his two sheep camps—in the fall of 1872—was all there was on that land at that time.

134 Int. 9. Now state what improvements there were put upon that land at any time during the year 1873, if any.

Ans. There was some improvements made during the year 1873, by different parties, the first of which, I think, was in June. However, in July was the first buildings that I saw in progress of construction. I think foundations were laid before, and during the months of July and August there were small houses built on every quarter section of this land—at least started if not completed.

Int. 10. State the names of all the persons you can who settled upon or put improvements upon that land during the summer of 1873.

Ans. George Brown, Sam. Shoemaker, one man by the name of Pier, John Cowan, Ed. Shear, Charles Leach, George Peck, Charlie Peck, Charles Jones, Ed. Jones, and a man by the name of Macklin, Erastus Smith, Cornelius Gilday, Romain. That is all I can think of.

Int. 11. Did you hear the names called over which are mentioned or contained in interrogatories numbered thirteen (13) to Van Horn and seven (7) of Boggs, of the witnesses Boggs and Van Horn, and referred to in the testimony of the other witnesses heretofore given in this case?

Ans. I did.

135 Int. 12. State what you know about there having been any such parties living in or near the vicinity of this land, or whether or not they ever made at any time any settlements or improvements upon said land.

Ans. I never knew such parties at that time or since.

Int. 13. State what opportunities you had for knowing whether such parties lived there on or near the said land, and whether or not any of them settled upon or put any improvements upon the said land.

Ans. I was over that land frequently during the summer of 1873, in the month of July, and from that time on I was on this land frequently, and saw no indications of such parties ever having been there. These improvements which I mention are those aside from the improvements made upon the town site.

(Signed) ALLEN E. CARPENTER.

Sworn to by the said Allen E. Carpenter before me, and by him subscribed in my presence, this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,

136 *Master in Chancery within and for the District of Colorado, of the Circuit Court of the Eighth (8th) Judicial Circuit of the United States of America.*

And the said CHARLES W. BOWMAN, of the town of Las Animas, Bent County, in the State of Colorado, being of the age of thirty-seven (37) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and in the matters of controversy, I did carefully examine the said Charles W. Bowman, and he did thereupon depose, testify, and say as follows, to wit:

Charles W. Bowman sworn on behalf of the United States.

Int. 1. State your name, age, residence, occupation, and how long you have lived at Las Animas.

Ans. Charles W. Bowman; 37 years of age; journalist; lived at Las Animas since April, 1873.

Int. 2. How well have you been acquainted or how general has your acquaintance been with the people living in and in the vicinity

137 of Las Animas during 1873 and since?

Ans. In 1873 I was a stranger. I gradually made acquaintances as fast as possible. I was well acquainted in the town a short time after coming there—a few days.

Int. 3. What proportion of the people living in and around Las Animas were you acquainted with or did you know during the months of May, June, & July, 1873?

Ans. I knew probably a majority of them.

Int. 4. Did you hear the descriptions of the land called off which is contained in the interrogatories propounded to the witnesses Van Horn and

Boggs, and referred to in the testimony of the other witnesses in this case?

Ans. I heard it called off to Mr. Van Horn.

Int. 5. Do you know that land, that is, where it is situated geographically?

Ans. I do.

Int. 6. Do you know the geographical situation of that land with sufficient definiteness to enable you to go upon it and over it?

Ans. Yes, sir.

Int. 7. State what you know about any settlements or improvements that had been made or put upon said land when you first knew it in April or May, 1873.

138 Ans. When I first saw the land there were few, if any, improvements upon it.

Int. 8. State the time when that was.

Ans. It must have been May or June; I am not sure when I first drove over it.

Int. 9. State as near as you can all the improvements that was on that land at the time when you first knew it.

Ans. In the month of August, 1873, when I went over the land, I saw improvements by Mr. Macklin, I think, Mr. Brown, Mr. Peck, Father Gasparri, and there were some other foundations, but I did not know the ownership.

Int. 10. State particularly all the improvements or settlements that you know of on the said land in the month of April, May, June, or July, or August, 1873.

Ans. I personally knew of no improvements previous to August; however, parties were going up there to make improvements during the spring at various times. I have already stated what improvements were made in August. I laid a foundation myself in August.

Int. 11. Did you hear the names called off contained in the 13th int. to Van Horn and in 7th int. to Boggs, interrogatories propounded to the witnesses Van Horn and Boggs, and referred to in the testimony of the other witnesses?

139 Ans. I did.

Int. 12. State what you know about whether or not there were any such parties living upon or in the vicinity of this land during the year 1873 or since.

Ans. I did not know of any such parties at that time or since.

Int. 13. State what opportunities you had to know any parties that might have settled upon or put improvements upon this land during the summer of 1873.

Ans. My opportunities were good: first, because I was a journalist and felt an interest in the settlement of the county and any parties that came in to settle; second, there was a great deal of talk about that fine piece of bottom up there, and a great many went up there, back and forth, to see it.

Int. 14. Do you know anything about any deeds or patents for the land in dispute having been brought to the recorder's office of Bent County for record? If yea, state what knowledge you have regarding these deeds and patents, if any.

Ans. I know of them, know of certain patents and deeds covering this land. The recorder's office was opposite my own in Las Animas, and I went into his office one afternoon and saw him engaged recording
140 quite a package of them. A gentleman was there in waiting. I had a curiosity to see the deeds at that time, but I do not think I had opportunity to look at them just then. I afterwards to' a memorandum of the patents and the deeds from the clerk. I am not sure whether I took it directly from the deeds or from the record. As near as I can recollect there were seven patents brought this time. There were deeds from the patentees to persons by the name of Harris and Perry and from them to D. H. Moffat, jr.

Int. 15. How did you obtain your knowledge regarding these deeds and patents?

Ans. I obtained my information from the county clerk. He communicated with me freely on the subject. I should say the deputy county clerk. Richard Simpson was his name.

Int. 16. Who was the county clerk at that time?

Ans. He did the work at the office.

Int. 17. But who was the county clerk?

Ans. John M. Boggs.

Int. 18. Did you know who brought these patents and asked to have them recorded?

Ans. One of two men, Hutchins or Hedge. They were a firm. I had seen them both, but did not know them well enough to say which one it was at the time. I know now it was Mr. Hutchins.

141 Int. 19. State what you know with reference to whether these papers were left there for record or whether they remained in the custody of the party bringing them until they were all recorded and then taken away by the party.

Ans. The person bringing them was in the office a portion of the time. He remained in town until the recording was entirely done. The clerk worked late to get it done, so that he could take them with him.

Int. 20. Do you know or are you acquainted with David H. Moffat, jr.?

Ans. I am not personally acquainted with him.

Int. 21. Do you know whether the clerk was paid any extra compensation for working continually until late at night, as you have stated, in recording the deeds and patents you have mentioned?

Ans. Not of my own knowledge.

(Signed) CHAS. W. BOWMAN.

Sworn to by the said Charles W. Bowman before me and by him subscribed in my presence this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,

Master in Chancery within and for the District of Colorado,

142 *of the Circuit Court within and for the Eighth (8th) Judicial Circuit of the United States of America.*

The further taking of these depositions is now here continued until tomorrow, Saturday, July 14th, 1877.

(Signed) HENRY C. F. JENSEN,

Master in Chancery for the U. S. Circuit Court.

The taking of these depositions is now here resumed on Saturday, the fourteenth (14th) day of July, A. D. 1877, at 9 o'clock a. m.; same counsel present as yesterday.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court.

And the said JOHN CARROLL, of West Las Animas, Bent County, State of Colorado, being of about the age of thirty (30) years, and having been by me first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the proceedings in chancery
143 and in the matters of controversy, I did carefully examine the said *Charles W. Bowman*, and he did thereupon depose, testify, and say as follows, viz:

John Carroll.

Int. 1. State your name, age, occupation, and residence.

Ans. John Carroll is my name; thirty years old; I am a railroad man; I live in Bent County, West Las Animas, Colorado.

Int. 2. How long have you resided in Bent County, Colorado?

Ans. First of next month four years.

Int. 3. Do you know the parties to this suit or either of them?

Ans. I know the United States; I know Mr. Moffat by sight.

Int. 4. How generally have you been acquainted with the people living in or near the vicinity of Las Animas during the past four years, and particularly how well acquainted were you in that vicinity during the years 1872 and 1873?

Ans. I was not there in 1872 at all. I came there August first, 1873. From that time on I was very well acquainted with the people that lived in Las Animas.

Int. 5. Did you hear the descriptions called off of the land mentioned and described in interrogatories five (5) propounded to the witnesses
144 Boggs and Van Horn in this case?

Ans. I did, sir.

Int. 6. Do you know that land from the descriptions given of it in those interrogatories?

Ans. I am well acquainted with the land, but not well enough acquainted with it to pick it out by sections or quarter sections.

Int. 7. Do you know where it is situated geographically?

Ans. I do.

Int. 8. Do you know with sufficient definiteness from the descriptions to enable you to go upon it?

Ans. Yes, sir.

Int. 9. When did you first know that land?

Ans. I first knew that land when I came across it in August, 1873, and I have lived around there ever since.

Int. 10. State what you know about any settlements having been made on or any improvements put upon that land or any portion of it during the summer of 1873.

Ans. Well, sir, I never knew of any only the ones that have been put there by the men who claimed the land; that is, the settlers that claimed the land.

Int. 11. State who these settlers were, and when the improvements you refer to were put there?

Ans. To the best of my knowledge, they were put there from the first of August until about the first of September; it might have been a little later. Sam. Shoemaker, John Cowan, Smith, A. E. Carpenter,
145 George Peck, and John Pier—I bought his claim-house afterwards; Dr. Deney, Macklin, Romain, Ed. Shear, George A. Brown, and others. I can't just think of their names.

Int. 12. Did you hear the names called off contained in interrogatories thirteen (13) and seven (7), propounded to the witnesses Van Horn and Boggs, and referred to in the testimony of the other witnesses in this case?

Ans. I did, sir.

Int. 13. State what you know about any of the parties there named having ever settled upon or put any improvements on the said land in dispute.

Ans. I never did know them, or know of any improvements they put on that land.

Int. 14. Did you ever know of any such parties having lived on or in the vicinity of said land?

Ans. I never did.

Int. 15. Were there any improvements on that land when you first knew it?

Ans. There was not.

Int. 16. If you know anything further regarding the settlement upon or improvements on said land mentioned, or anything in relation to the parties named in the interrogatories you have been referred to, you may state it.

146 Ans. I do not.

(Signed) JOHN CARROLL.

Sworn to by the said John Carroll before me and by him subscribed in my presence this fourteenth (14th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the District of Colorado, for the Circuit Court of the Eighth (8th) Judicial Circuit of the United States of America.

And the said LINUS E. BOOMER, of the town of West Las Animas, in the county of Bent, State of Colorado, being of the age of thirty-one (31) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and in the matters of controversy in the above-entitled cause, I did carefully examine the said Linus E. Boomer, and he did thereupon depose, testify, and say as follows, viz:

Linus E. Boomer.

Int. 1. State your name, age, occupation, residence.

147 Ans. Linus E. Boomer; 31 years of age; contractor and builder; residence, West Las Animas, Bent County, Colorado.

Int. 2. How long have you resided in or near West Las Animas?

Ans. Nine years.

Int. 3. How generally acquainted have you been in that vicinity during the past nine years, and particularly how well acquainted in Las Animas and in that vicinity, and in Bent County, during the years 1872 and 1873?

Ans. I was acquainted with nearly all the settlers of Bent County during those years.

Int. 4. Did you hear the description of the land given which is contained in interrogatories numbered five (5) , propounded to the witnesses Van Horn and Boggs in this case?

Ans. Yes, sir; a good portion of it.

Int. 5. Do you know the land contained in those descriptions from hearing the descriptions called off?

Ans. I do, sir.

Int. 6. How long have you known that land?

Ans. I have known that land since 1869.

Int. 7. Do you know the geographical situation of that land with sufficient definiteness to enable you to go upon it, or most any portion of it?

Ans. Yes, sir.

148 Int. 8. State what you know about there having been any settlements made upon or improvements put upon that land during the year 1872.

Ans. In the year 1872 there was two small shanties on the land belonging to Tom Boggs. He had sheep camps there. That is all the improvements there was at that time during the year 1872.

Int. 9. State what you know about there having been any settlements made or improvements put upon the land in 1873.

Ans. In 1873, during the months of June, July, and August, there were several claim-houses put onto the land by personal acquaintances of mine.

Int. 10. State who those parties were that put the improvements on the land at that time.

Ans. John Pier, Sam. Shoemaker, George A. Brown, Charlie Jones, Ed. Jones, a man by the name of Roumain or Romain, John Cowan, Rat. Smith, E. A. Carpenter. I am not sure that his land lies on that; it is a tract of land lying right joining. There is a few that I can't remember their names.

Int. 11. What became of the improvements put on the land by these parties, or of the parties, with regard to how long they lived upon it?

Ans. Well, some of them reside on it now; some of them resided on it a year; some of them, I think, left their claims in less time than

149 that. I believe one or two sold out their claims to Mr. Moffat, but that is only by hearsay. I don't know that they did sell to him.

Int. 12. Did you hear the names called off contained in interrogatories thirteen (13) and seven (7) propounded to the witnesses Boggs and Van Horn in this case, and referred to in the testimony of the other witnesses herein? And, if so, state what you know about any of the said named parties having made any settlements upon or put any improvements on the land in dispute, at any time.

Ans. I heard the names, yes, sir. I have never seen any men in the county, bearing those names. I know that there has been no improvements put upon that land by any people that went by those names.

Int. 13. Do you know anything further relating to this land in controversy, or the settlements or improvements made on it, or relating to the parties just named, in regard to their making any settlements or improvements on this land? If so, you may state it.

Ans. I do not.

(Signed) LINUS E. BOOMER.

Sworn to by the said Linus E. Boomer before me, and by him subscribed in my presence, this fourteenth (14th) day of July, in the
150 year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,

Master in Chancery within and for the District of Colorado, for the Circuit Court of the Eighth (8th) Judicial Circuit of the United States of America.

And the said SAMUEL A. HUTCHINS, of the city of Denver, county of Arapahoe, in the State of Colorado, being thirty-nine (39) years of age, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy in the above-entitled cause, I did carefully examine the said Samuel A. Hutchins, and he did thereupon depose, testify, and say as follows, to wit:

Samuel A. Hutchins.

Int. 1. State your name, age, occupation, and residence.

Ans. Samuel A. Hutchins; 39 years old; residence, Denver; business, contractor—general railroad contractor.

Int. 2. How long have you resided in the city of Denver, Colorado?

151 Ans. Denver has been my home since 1860, but I have been absent at different times, although I considered this my home.

Int. 3. Do you know the parties to this suit, plaintiff or defendant; if so, how long have you known them respectively?

Ans. The United States Government I am not much acquainted with. With Mr. Moffat I have a slight acquaintance, merely a passing business acquaintance. I have had business acquaintance with Mr. Moffat, I suppose I might say since 1865 or '6—some years; I don't recollect the exact date; some years—about that time.

Int. 4. What were you engaged in and where were you during the years 1872 and 1873?

Ans. Well, sir, I could not tell you those years what particular place I was in, but about that date, I was engaged by the Kansas Pacific, doing some work between Kit Carson and Las Animas, but I won't be positive as to the years.

Int. 5. How were you engaged by the K. P. road; as a contractor, in the ordinary sense of the term, for grading, or as an employee of the company?

Ans. Grading contractor, and track-layer.

Int. 6. Were you acquainted at that time in and around Las Animas?

152 Ans. No, sir: I was not. Never had been there up to that time—up to the time I was grading there.

Int. 7. Did you know anything about a tract of land lying on the Arkansas River bottoms, extending from the river to the hills, just above the town of West Las Animas, Bent County, Colorado?

Ans. I simply know there is a tract of land there—a piece of prairie—but who it belongs to I know nothing about. I could not call sections or numbers; I am not familiar with it.

Int. 8. Did you at any time during the year 1873 take a number of deeds and patents to the recorder's office of Bent County, and have them recorded?

Ans. I carried some papers to the recorder in Bent County and had them recorded; it must have been somewhere in those years, but I could not tell whether 1872, '3, or '4.

Int. 9. What kind of papers were they?

Ans. I could not say that; I suppose they were deeds. It has been so long ago I would not say what they were. Perhaps they were deeds and patents. They were sealed and closed when I got them, and I returned them in the same way.

Int. 10. Did you take them to the recorder's office and remain there until they were recorded and then bring them away with you?

Ans. I took them to the recorder's office and remained in Las
153 Animas until they were recorded, but not at the recorder's office. I brought them away with me.

Int. 11. How long did it take to have them recorded?

Ans. I could not say.

Int. 12. One day or two days?

Ans. It was perhaps longer than a day. I could not tell the exact time.

Int. 13. State, if you know, who those deeds, patents, or papers belonged to.

Ans. Well, sir, I could not tell you. They were given to me by Mr. Moffat, and I returned them. I could not tell you who they were for; that is, the whole of them.

Int. 14. Who did you return them to?

Ans. I returned them to the bank. I don't think I gave them to Mr. Moffat when I came up.

Int. 15. Who sent you from here to Las Animas, or who employed you to take those papers to the county recorder of Bent County to have them recorded and bring them back?

Ans. Mr. Moffat heard by some means that I was going to Las Animas, and asked me if I would take those papers and have them recorded, which I done.

Int. 16. Did Mr. Moffat tell you anything about what those papers were?

Ans. Did not.

154 Int. 17. Did Mr. Moffat charge you or caution you not to leave those papers with the recorder of Bent County and come away, but to remain until they were recorded, and then bring them back?

Ans. Mr. Moffat said, as I was going away, that there had been some trouble with papers left for recording there, and he wished me to bring them back. There had been some records destroyed in Las Animas County that year, and he seemed a little doubtful, and thought that these might go that way. I had the town and county of Las Ani-

mas confused in my mind, and I thought perhaps it was in that county, but by making inquiries I found I was in a different county.

Int. 18. Who paid you for taking those papers there and having them recorded and bringing them back?

Ans. Mr. Moffat paid the cost of recording.

(Interrogatory repeated.)

Ans. Mr. Moffat; I can't say that either, because there was simply a credit placed to my account in the bank.

Int. 19. What was it for?

Ans. For recording and expenses.

Int. 20. How much did you pay to the recorder of Bent County for recording those deeds and patents?

Ans. I don't know.

Int. 21. Did you at the time that you paid it?

154½ Ans. Undoubtedly.

Int. 22. Did you pay the recorder any extra compensation for recording those deeds and patents as fast as possible, and for working extra hours to complete the record as soon as possible?

Ans. Nothing whatever; although I will make this statement: My business here required my early return, and I told him I would pay him if he would work extra hours rather than to have to wait there extra time.

Int. 23. State all that you can remember that Mr. Moffat said to you in regard to or in connection with the taking of those papers and having them recorded and returning them to the First National Bank.

Ans. He said he wished I would take those papers to Las Animas and have them recorded and fetch them back. That is all the conversation I recollect in regard to the recording of the papers.

Int. 24. Did you know, by information or otherwise, of there being any trouble, excitement, or talk regarding the title to the piece of land in the bottom—the land that you have mentioned that you knew where it was situated at that time?

Ans. I knew, at the time that we were railroading there, that

155 there was talk among settlers who had made claims, or tried to make claims, or something of that kind. There had been more or less talk or rumor.

Int. 25. Did you know whether or not the deeds and patents you took for record conveyed or purported to convey that property situated in the bottom where the town of West Las Animas lies, or along up the river above?

Ans. I supposed that those papers had some connection with the case.

Int. 26. With what case?

Ans. With the case you are taking evidence in now, I suppose; but there was no case at that time.

Int. 27. Did you know that they had any connection or conveyed or purported to convey the title to that land mentioned?

Ans. I did not know what land. I knew it was some land they conveyed, but I could not place the land.

Int. 28. Did you suppose it to be the land mentioned in this case?

Ans. I supposed perhaps it was.

Int. 29. Why did you suppose it to be the land in controversy?

Ans. For the simple reason that when these papers were being recorded

some of the citizens of Las Animas were very much surprised to think that papers should be recorded, or that there was any title or anything of the kind to that property.

156 Int. 30. Did you hear much talk or discussion in the recorder's office regarding the title?

Ans. There was some little talk.

Int. 31. What other business had you at Las Animas at that time except the taking of the deeds and patents there to have recorded?

Ans. Filing a lien upon the Arkansas Valley Branch Railway.

Int. 32. Do you know how many deeds and patents you took there?

Ans. I do not.

Int. 33. Do you know the names of the parties that the deeds purported to have been executed by?

Ans. I do not.

Int. 34. You say you cannot remember the time when this was?

Ans. I cannot place the year. It was in the fall of the year some time. It might have been earlier or later for all I know; it was so long ago.

Int. 35. Who was recorder at that time? Who recorded the papers for you?

Ans. The deputy recorder recorded the papers. John Boggs was the recorder; I do not know the name of the deputy.

Int. 36. How many papers, deeds, patents, &c., did you take to the recorder, at the time you mention, to get recorded?

Ans. I could not tell. They was in the package, and I could not tell.

157 Int. 37. Give us the best of your judgment as to whether there was fifty or five.

Ans. It looked to me like a large commercial envelope, pretty well filled; I could not say whether 10 or 100.

Int. 38. Could not you give us an idea as to whether there were 10 or 50?

Ans. I could not, for I never counted them; I don't know.

Int. 39. Couldn't you form an opinion by the amount you paid to have them recorded?

Ans. I could not do that, for the reason I do not know the cost of recording each paper or any number of papers.

Int. 40. What were your business relations with Mr. Moffat at this time that you had these papers recorded?

Ans. No business relations, excepting I was simply a depositor at his bank.

Int. 41. Were you and him interested in or operating together in any matters connected with the Kansas Pacific Railroad or land company?

Ans. No, sir; never had any interests together or was connected in any affairs, either at that time or any other, that I recollect of.

Int. 42. Do you know anything about whether Mr. Carr, president of the K. P. Company, or the K. P. Company, claimed to have any

158 interest in the property covered by these deeds or patents?

Ans. I do not.

Int. 43. Do you know anything about any of the parties purporting to have executed these deeds?

Ans. I do not; in fact, I do not even know the names.

Int. 44. Were you told at that time, or any other time, anything about

the parties or their connection with the property purporting to have executed the deeds?

Ans. Never was.

Int. 45. Did you ever know any man connected with that by the name of Thomas Harris?

Ans. I do not know Thomas Harris.

Int. 46. Did you ever know Henry D. Perry?

Ans. I do not know Henry Perry.

Int. 47. You say you cannot remember the amount you paid for recording those deeds and patents?

Ans. No, sir.

Int. 48. Were you instructed, when you took those deeds and patents to have them recorded for Moffat, to examine into the title in any way?

Ans. No, sir; he said nothing to me except to record those papers.

Cross-examination:

X-int. 1. If I understood you, you gave the papers to be recorded to the deputy recorder of Bent County?

Ans. Yes, sir.

159 X-int. 2. At what hour of the day did you first see the deputy recorder after your arrival?

Ans. I met him at breakfast at the hotel; I was introduced to him there.

X-int. 3. You say that in time you proposed to the deputy recorder that you would give extra compensation if he would record those deeds as quickly as possible?

Ans. Yes; that was simply a matter of my own convenience. I told him my business required me to be home at a certain time, and if he would work after office hours I would pay him extra.

X-int. 4. Then it was not at the suggestion of Mr. Moffat that you made him that proposition?

Ans. Mr. Moffat never said pay extra or pay anything to me.

Redirect examination:

Int. 1. Why did you desire to bring those papers away with you?

Ans. Mr. Moffat requested me to fetch them.

Int. 2. And not leave them with the recorder to be mailed back in the usual course of business?

Ans. That was my instructions, to have them recorded and return them.

Int. 3. Did Mr. Moffat give you any reasons why he must have them recorded and bring them back with you?

Ans. I think Mr. Moffat said there had been some trouble in this county in burning records, and he did not want them left. I sup-

160 pose he confused the counties.

Int. 4. Had there been records burnt in Bent County?

Ans. No, sir; but I associated them together.

Int. 5. Had there been any records burned in Las Animas County?

Ans. There had been that spring.

Int. 6. I believe you stated that this was in the fall of the year?

Ans. Fall or early winter.

Int. 7. Did you have any interest, directly or indirectly, present or in prospect, in connection with this land that these patents and deeds conveyed?

Ans. None whatever.

Int. 8. Have you any now?

Ans. None. I don't own a foot of land in Bent County.

Int. 9. What were your business relations with Mr. Moffat at this time?

Ans. Simply a depositor at the bank.

(Signed) S. A. HUTCHINS.

Sworn to by the said Samuel A. Hutchins before me, and by him subscribed in my presence, this fourteenth (14th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado,
161 *in and for the Circuit Court of the Eighth (8th) Judicial Circuit of the United States of America.*

The further taking of these depositions is now here adjourned until Monday, July 16th, A. D. 1877.

(Signed) H. C. F. JENSEN,
Master in Chancery, &c.

Monday, July 16th, A. D. 1877, at 9½ o'clock a. m., the further taking of these depositions is now here resumed. Same counsel present as of Saturday, the 14th inst.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court.

And the said GEORGE H. HILL, of the age of thirty-eight (38) years, residing five miles east of Fort Lyons, Bent County, State of Colorado, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy in the above-entitled cause, I did care-
162 fully examine the said George H. Hill, and he did thereupon depose, testify, and say as follows, to wit:

George H. Hill.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is George H. Hill; 38 years old; residence, five miles east of Fort Lyons, Bent County; my occupation at present is stock-raising.

Int. 2. How long have you resided in or near the vicinity of West Las Animas, Bent County, Colorado?

Ans. About five years.

Int. 3. How long have you been acquainted in or around that vicinity?

Ans. My first visit to Bent County was in 1869.

Int. 4. How generally have you been acquainted in Bent County for the last five years, and particularly in the vicinity of and in West Las Animas?

Ans. I can say I have been well acquainted.

Int. 5. Have you heard the descriptions of the land called off contained in interrogatories five, and propounded to the witness Van Horn in his testimony given in this case?

Ans. Yes, sir; I have.

Int. 6. Do you know that land from the description that has been called off?

Ans. I do.

Int. 7. Do you know the description of that land geographically with sufficient definiteness to enable you to go upon it and tell where
163 it is from the descriptions?

Ans. Yes, sir; I could with instruments.

Int. 8. State what you know about that land with reference to your familiarity with it.

Ans. I surveyed that land in 1869 for the Government.

Int. 9. Did you make plats and field-notes of it when you surveyed it?

Ans. I made the rough diagram and the field-notes which were sent to the surveyor-general's office.

Int. 10. Have you known that land ever since?

Ans. I have.

Int. 11. Can you point out that land on the plats or diagrams that are handed you and you now have?

Ans. I can.

Int. 12. Are those plats or diagrams now handed you correct, or do they contain correct descriptions of the land in controversy that has been called over to you?

Ans. As near as my general knowledge goes, they appear to be correct. It would require the field-notes to prove the correct make-up of the maps.

Int. 13. I now ask you to mark with red ink upon the plats you now hold a mark to identify upon those plats the particular lots, forty-acre subdivisions, and the other subdivisions contained in the descriptions given of this land in controversy, which has been named over to you and contained in interrogatories propounded
164 to the witnesses Boggs and Van Horn and referred to in the testimony of the other witnesses heretofore given in this case.

Ans. I will mark a cross with red ink on each subdivision, and I have now done so as near as possible. Van Horn's and Boggs' interrogatories conflict, and in one place it is impossible for the same number—the number ought to be changed; the south half should be the north half. Where it reads the south half of the southwest quarter of section eleven, township twenty-three south, of range fifty-three west, it should read the north half of said quarter, &c., so as to agree with the balance of the filing. The forties have got to join each other; and besides one forty of that section was already taken.

Int. 14. I will now ask you to make these plats, containing a description of this land, as you say, marked with crosses in red ink upon them, which you have made indicate where on the plats the land is represented and which has been referred to, a part of your testimony in this case.

Ans. I will make the said plats a part of my deposition.

(The said plats are hereby made a part of the testimony of this witness, marked "Exhibit A" and "Exhibit B.")

Int. 15. State what you know about there having been any set-
165 tlements made upon or improvements put upon the said land during the year 1872, or whether there were any improvements on that land before the year 1872.

Ans. There were some improvements on that land previous to that year.

Int. 16. State what they were.

Ans. I can only recollect definitely one building on that land in 1872, or previous to 1872; it was in 1869, I remember.

Int. 17. State what you know about it in 1872.

Ans. I don't know of any other buildings being there in 1872. If there was any, I never noticed them.

Int. 18. What was your opportunity in 1872 for observing whether any improvements or settlements were made upon the said land?

Ans. Passing along the wagon road between old Las Animas and Pueblo, I passed along the south edge of that land. I should think I passed at least a half a dozen times in that year.

Int. 18½. State what you know about there having been any settlements made upon or improvements put upon the said land during the year 1873.

Ans. In the fall of 1873 I returned there and found them building a town. I left that vicinity about the first of July and returned in October of 1873, and found parties erecting buildings in the place now called West Las Animas, on the northeast quarter of section ten and the southeast
166 quarter of section three, township twenty-three south, of range fifty-two west.

Int. 19. State all you know about there being any other improvements upon any other portion of said land, erected in the year 1873.

Ans. I don't know of any others; during that year I never went any further up the river than the town, on that side of the river.

Int. 20. State if you are acquainted with or know any of the parties or persons named over to you contained in interrogatory thirteen propounded to the witness Van Horn, in his testimony in this case, and the same names referred to in the testimony of the other witnesses hereinbefore in this case, or whether they lived in Las Animas or in its vicinity, or whether any of them made any settlements or put any improvements upon any of the land in controversy in this case hereinbefore described.

Ans. I have never known men of those names living in that section of the country, or to have any improvements on said land.

Int. 21. State what your opportunity was during that time to know whether such parties ever did settle upon or make any improvements upon that land.

Ans. During the last three years my business has frequently called me to West Las Animas; and being there, if there was any men of that kind,
167 or improvements being put up by them, I would have certainly heard it; I can say I have averaged visiting West Las Animas twice a month.

Int. 22. What was your opportunity during the years 1872 and 1873 for knowing whether any such parties made settlements or put improvements on that land?

Ans. My opportunity during 1872 and '73 would not be as great as it was afterwards, because in 1872 and 1873 I was employed by the Government as Government surveyor, and was frequently absent from the county. I stated in 1872 I passed there about six times. In 1873 I did not pass upon that side of the river at all. I passed on the north side going up to Pueblo once in 1873.

Int. 23. Could you look over the land from where you went in 1873?

Ans. Not entirely, because the timber along the river would hide part of the land from my observation.

Int. 24. Do you know who laid out or surveyed off the town of West Las Animas? If so, state who did it and when it was done.

Ans. I do not know of my own personal knowledge, but always understood it to have been done by one of the Kansas Pacific Railroad engineers.

Int 25. Can you name him.

Ans. No, sir; I do not remember his name now. I probably
168 heard it at the time, but I can't recall it at present.

Int. 26. What official position do you now hold and have held in years past in the county of Bent, Territory, now State, of Colorado?

Ans. From the fall of 1874 to 1876 I was county surveyor. I am now county commissioner for the eastern district of that county, and also acting as deputy county surveyor.

(Signed) GEORGE H. HILL.

Sworn to before me by the said George H. Hill, and subscribed by him in my presence, this sixteenth (16th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court within and for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

And thereupon the further taking of these depositions is now here adjourned until Wednesday, the eighteenth (18th) day of July, A. D. 1877, at the hour of 11 o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery.

169 The taking of these depositions is now here resumed, pursuant to adjournment, on Wednesday, the 18th inst., at 11 o'clock a. m.

And the said SAMUEL N. WOOD, of the age of thirty-three years, a resident of Deadwood, in the Territory of Dakota, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy in the above-entitled cause, I did carefully examine the said Samuel N. Wood, and he did thereupon depose, testify, and say as follows, to wit:

S. N. Wood.

Int. 1. State your name, age, occupation, and residence.

Ans. My name is Samuel N. Wood; age, 33; occupation, that of banking; my residence is Deadwood, I expect, at the present time, in Dakota.

Int. 2. Where have you resided during the past six or seven years?

Ans. In Denver, Colorado.

Int. 3. What was your occupation, particularly as to where you were employed or doing business, during the years 1872, '3, and '4, in the city of Denver, Colorado?

170 Ans. I was during those years assistant cashier of the Colorado National Bank of Denver.

Int. 4. Do you know anything about any agricultural college scrip of the State of Florida having been sold or handled by the Colorado National Bank during the year 1873 for one Gleason F. Lewis, of Cleveland, Ohio?

Ans. Yes, sir; at various times during those years we had considerable amounts of agricultural college scrip sent to us here to be delivered to different parties upon certain conditions, in regard to which we were instructed, upon the payment of certain sums of money, of Florida and other States. It was sent to us by this Mr. G. F. Lewis, of Cleveland, but his first name I never knew, only his initials.

Int. 5. State what the relations of the Colorado National Bank were to this scrip, with reference to the sale of it; that is, whether the bank sold the scrip as agent for Lewis, or whether the bank merely handled the scrip and remitted the funds to Lewis.

Ans. We were merely handling the scrip for Lewis, and remitted the money to him. In our instructions in connection with it we were always instructed to deliver the scrip to parties named upon the payment of a certain sum of money, so much for each piece; the amount per piece I have forgotten, but I think it varied; I think the price advanced
171 from time to time, for which we were to get a dollar apiece for our trouble and expenses in the matter.

Int. 6. Did you attend to the business of handling this scrip, delivering it, and remitting the money for the bank?

Ans. I generally did.

Int. 7. Did the bank deliver and receive the money for the following described numbers of agricultural college scrip of the State of Florida, namely: Numbers 175, 180, 31, 30, 36, 3, 185, 182, 4, 178, 187, 183, 177, 34, 7, 184, 6, 35, 29, 200, 174, 5, 188, 176, 179, 37, 186, 18, and 32?

Ans. I cannot give the list of all those that were handled. We handled the following numbers. Sometimes these numbers were recorded in our books and at other times they were not. As a rule, I always kept a record of the numbers, but sometimes others in the bank would deliver them while I was out, and would not keep a record of the numbers. On May 7th we delivered for Lewis and sent him the proceeds of the following Florida college scrip: Number 174, 175, 176, 177, 178, 179, 180, and numbers 1, 2, 3, 4, 5, 6, 7, and 8. Now, I take it these are 181, '2, '3, '4, '5, '6, '7, and '8, but I am not sure; following consecutively that way it
172 is customary to follow the numbers in that manner. Then, numbers 29, 30, 31, 32, 33, 34, 35, 36, 37. There may be numbers 129, &c. They were credited up on May 7th, 1873, and I presume it was the day they were delivered.

Int. 8. What other numbers did you deliver?

Ans. That is all I looked up; I did not know that there was another date.

Int. 9. There is a few numbers you did not give which I have.

Ans. It's possible we might find them, and it is possible they might not have been recorded. I looked through the books and did not find any other numbers but these. I can find pieces, but no other record of numbers.

Int. 10. Who was this scrip delivered to?

Ans. Mr. Daniel Witter, is my recollection of it now.

Int. 11. Did you deliver other scrip than that you mention, at different times during the summer of 1873, to Daniel Witter?

Ans. I did.

Int. 12. You may state about how much or how many pieces you delivered to him.

Ans. I don't know that I can tell the number. I might, perhaps, by investigating the books. There was a large number, however. It is my recollection that about that time there was a great deal of scrip being sold,
173 and Witter was at that time the party that negotiated with Lewis, and the man to whom he was to deliver. I could not say how much, but there was a large amount at different times.

Int. 13. Did you ever deliver any scrip to any one else during the summer and receive the money thereof from any one except Daniel Witter?

Ans. I do not think we did. Mr. Lewis had several parties here to whom he had scrip delivered, but it was prior to that time, and may have been afterwards, too; but at that time Mr. Witter was the man who had control of all his scrip here.

Int. 14. State what other parties before and after the time you have mentioned handled scrip here, or you delivered scrip to, for Mr. Lewis.

Ans. Before that time we delivered scrip at different times to a Mr. W. H. Townsend, but I am not sure that anybody after Mr. Witter. My recollection is that Mr. Witter was the last party who had control of the scrip, and I think he had control of it up to the time it became used up, exhausted. If there were other parties after that, I don't remember.

Int. 15. Was all the scrip you have mentioned as being delivered to Witter, the numbers of which you give, delivered on the 7th of May, 1873?

Ans. I have no recollection of the transaction now, but our books
174 show it to have been entered up at that time. There is a possibility that Mr. Witter might have got the scrip a short time before. I have a recollection that he would come in and ask for a certain number of pieces of scrip and say he would come in and pay for it afterwards. I have no recollection whether this was the case with the present lot or not. It might have been delivered and paid for on the same day; but it would not appear as being entered up for Mr. Lewis until the money was paid for it, and it was undoubtedly paid for on this day even if obtained before.

Int. 16. Do you know anything about who Mr. Witter sold this scrip to?

Ans. I do not of my own knowledge.

Int. 17. Was all the scrip you have mentioned, or that you have given numbers of, as having been sold on the 7th of May, or delivered to Witter, agricultural college scrip of the State of Florida?

Ans. It was; it was so recorded in our books, and there is no doubt but that is the case.

Int. 18. If you know anything more connected with this transaction, sale, or delivery of this scrip you can state it.

Ans. I don't think of anything now in connection with it. We
175 merely acted as agents for them. This is about the manner in which the business was done, in which I have stated.

(Defendants' counsel objected to each and every question asked *to* the witness, as well as the answers thereto, for the reason that the same are irrelevant and did not tend to prove the issues in this case.

By agreement of counsel, the said objection to have the same force and efficacy as if made to each question and each answer at the time that the said questions were made and said answers given.)

(Signed) SAMUEL N. WOOD.

Sworn to before me by the said Samuel N. Wood, and by him subscribed in my presence, this twenty-first (21st) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court within and for the District of Colorado, of the Eighth (8th) Judicial Circuit of the United States of America.

176 The further taking of these depositions was thereupon adjourned until Tuesday, the twenty-fourth day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the District of Colorado, Eighth Judicial Circuit of the Circuit Court of the United States of America.

TUESDAY, *July 24th*, A. D. 1877.

The taking of these depositions is now here resumed, pursuant to adjournment, at the hour of 11 o'clock a. m.; G. G. Symes, esq., appearing for said plaintiffs, and Alfred Sayer, esq., for said defendants; Colonel Lucien Peyton, special agent for the Department of Justice of the United States of America, at Washington, District of Columbia, also being present.

And the said DANIEL WITTER, of the city of Denver, in the county of Arapahoe, State of Colorado, being of the age of fifty (50) years,
177 having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters in controversy in this suit, I did carefully examine the said Daniel Witter, and he did thereupon depose, testify, and say as follows, to wit:

Daniel Witter.

Int. 1. State your name, age, and occupation.

Ans. Daniel Witter; 50 years old; occupation at present, I hardly know what to say; gardening, I guess; formerly in the real-estate business.

Int. 2. How long have you resided in the city of Denver, Colorado?

Ans. Since 1863; since the fall of 1862.

Int. 3. Do you know the parties to this suit—if so, how long have you known them respectively—in which the United States is plaintiff and David H. Moffat, jr., the defendant?

Ans. I have known the United States for some time; Mr. Moffat since about the time I came to Denver.

Int. 4. Did you deal in—that is, buy and sell agricultural college scrip of the State of Florida and other States during the years 1872, 1873, and 1874?

Ans. I did, about that time, and for several years; I don't remember the exact date now.

178 Int. 5. From whom did you purchase your scrip, or any particular portion of it, during the year 1873?

Ans. I purchased the scrip at various times from various parties. I remember purchasing a considerable quantity from Mr. Lewis, of Cleveland, Ohio—G. F. Lewis. It was sent to the Colorado National Bank, most of it at least, and I got it from the bank.

Int. 6. You may state generally how you disposed of that scrip, or sold it.

Ans. Generally the greater portion of it I sold to persons who came to this land office to make locations. I also sold to anybody who would apply to purchase; I sold some to go to the other land offices that I know; some to go to Cheyenne, some to Fairplay, and a considerable amount to Pueblo; some I located myself.

Int. 7. State what your custom was in getting this scrip from the bank, from the Colorado National Bank, where you say it was left; with reference to whether or not you took it from the bank as you sold it; that is, did you take any quantity out of the bank at any time, any considerable quantity, unless you had before contracted to sell and deliver it?

Ans. I might explain that my contracts for scrip were made di-
179 rect with Mr. Lewis, who sent the scrip to the bank to be delivered to me as I might need it, or perhaps when paid for; I am not positive, but the bank allowed me to take scrip out and sell; I would take what I thought I would need for a week or two and sell it, and when I got more would pay for what I had sold.

Int. 8. Did you sell any considerable quantity to be located at the Pueblo land office, or Arkansas Valley district, during the year 1873?

Ans. I did sell considerable quantity at Pueblo about that time; that is, I sold considerable quantities at Pueblo, but where it was to be located I don't know. I suppose that when I sold at a place where a land office is, it is to be located there, though I know nothing about it.

Int. 9. State, as near as you can, about the quantity you sold at Pueblo, which you say was to be located at that office, during the year 1873.

Ans. Well, it would be the most vague guess-work to answer that question. I was dealing largely in scrip, selling all over the country; that is, I have sold, perhaps, nineteen-twentieths of all the scrip that was located at land offices in this vicinity, and I hardly know what answer to make.

I think that if I was going to guess at it, that I sold one hundred
180 or more pieces, and yet it might not be that many, or it might have been more. A piece means 160 acres; very few were for less than 160 acres.

Int. 10. State, as near as you can, the largest amount of scrip that you sold at any one particular time, or on any one particular day, or during any particular week or month, that you can remember, at Pueblo, during the summer of 1873.

Ans. I can't state any definite amount. I might state this, that I looked over my letter-book at one time, at the request of Mr. Jacobson, and I

found, I think, four or five letters in which I wrote that I had sent certain pieces of scrip to Pueblo, or certain number of pieces, but I don't remember now. My business was so complicated that such things did not stick to my memory. Aside from that, I only remember having sold scrip there at different times in addition to these I found in my letter-book. Whether it was even in that year or not I could not state now.

Int. 11. To refresh your recollection, did you not sell and take from the bank at one time, during the summer of 1873, from 25 to 30 pieces of Florida agricultural college scrip to be located at the Pueblo land office?

Ans. I cannot state. I have no recollection. I have no doubt but what I took from the bank that number of pieces of scrip at
181 different times; but as to whether it was Florida or not I have no recollection, and no recollection of any particular time. My recollection is I usually took from ten to twenty-five pieces of scrip from the bank at a time. When I say to be located I mean to be sent to Pueblo.

Int. 12. To whom in Pueblo during this time that has been mentioned did you sell the said scrip, or any portion of it?

Ans. Well, the arrangement was made with Mr. Charles A. Cook by which I was to send scrip to one of the banks there. I am not positive whether it was all sent to the bank or a portion to the bank and a portion to Mr. Cook. I could not state now, but am under the impression that this is the case.

Int. 13. What do you mean by saying the arrangement was made with Charles A. Cook?

Ans. He called to see me to see what I could sell scrip at, and I gave him the prices.

Int. 14. Who paid you for your scrip that you made the arrangement that you say for the sale of, or concerning, with Charles A. Cook?

Ans. I couldn't state positively. It was either Cook or the bank it was sent to; perhaps both. In some cases Cook; in some cases the bank.

Int. 15. What bank was it sent to?

182 Ans. I think it was the First National Bank of Pueblo. I think it was Thatcher's bank.

Int. 16. What proportion of the scrip that you sold at Pueblo, or sent to Pueblo, during the year 1873, did you sell under the arrangement which you have mentioned and sent to the First National Bank or to Charles A. Cook?

Ans. Well, a very large proportion of all that I sold there was sent to one or the other of these parties.

Int. 17. Have you any books, papers, copies of letters of any kind, or memorandas that you can refer to to inform yourself more specifically now as to the matters you have been interrogated in reference to?

Ans. I have.

Int. 18. Will you refer to those memorandas?

Ans. Yes, sir. I have looked the whole matter up very carefully, and all I can find is certain letters. (Recess of half an hour to allow witness time to produce said memorandas.) I now have a memorandum of those letters.

Int. 19. Did you or not have or keep a book in which you made entries of the scrip which you sold to different parties, and the names of the parties and the amounts received, &c.?

183 Ans. I have such a book; but I find upon examination of it that from 1871 up to 1874 or '5 I made very few, if any, entries in it, and during that period I have no record of the scrip I bought and sold except what may be contained in my letter-book.

Int. 20. Did you, on or about the 7th day of May, 1873, take from the Colorado National Bank and send to Pueblo to Charles A. Cook, or the 1st National Bank for him, under the arrangement you have mentioned, 25 or 30 pieces of agricultural college scrip? If yea, you may state the numbers of the scrip that you sent about that time.

Ans. I have no recollection. I may have sent such scrip, but my records do not show it—not any that I have in the office that I can find—at that time, nor at any time that I can remember, as far as that number is concerned.

Int. 21. Did you take from the Colorado National Bank and pay for the scrip referred to in the last interrogatory on or about the 7th day of May, 1873?

Ans. I don't know. I have no record that I am able to find showing it, and I may or may not. I cannot tell.

Int. 22. State the largest amount of scrip that you have sent to Pueblo under the agreement that you have mentioned at any one time
184 during the month of May, 1873.

Ans. The largest amount I have any record of is May 27th, 1873—sixteen pieces. I have no recollection of any distinct number at any other time except so far as my record shows.

Int. 23. You may state as near as you can, by reference to your memoranda of your letters, the number of pieces, the amount of scrip, that you sent at any particular time during the month of May besides what you have just mentioned.

Ans. I have no memorandum of any other pieces during that month, and have no recollection as to that particular month; no recollection of any other pieces.

Int. 24. Give the numbers of the 16 pieces that you sent on May 27th.

Ans. There was of Florida scrip from 324 to 339, inclusive.

Int. 25. Who did you send this scrip to?

Ans. I am not able to state. My letter states "in accordance with your telegram of that date I send sixteen pieces of scrip." It would appear from the letter it was sent to Mr. Cook, but from my recollection of the arrangement with him I would suppose it was sent to the bank. It was either sent to the bank under the arrangement I had with Mr. Cock, or it
185 was sent to Cook direct. From my recollection of the arrangement between myself and Cook I should say it was sent to the bank, but from the reading of the letter itself I should say it was sent to Cook.

Int. 26. State particularly what this arrangement or contract was with Cook to send scrip there to the bank for him.

Ans. It was simply an arrangement that I would send such scrip as might be ordered, at a certain price, to the bank for him, or for his use. I might state further that he said to me that he had frequently people call in to make entries that would use scrip if it was where it could be reached, and that if he had land scrip there so that he could tell them where to get it without appearing to sell it himself, that in this was almost everybody

who made an entry would get scrip, and I sold it to him at such a price that somebody could make a profit, whether him or the bank I do not know.

Int. 27. You state that you sent a very large proportion of all the scrip that you sent to Pueblo under this arrangement with Cook to him, or to the bank. State more definitely, if you can, the exact proportion or the amount that you sent to any one else.

186 Ans. Well, I can't state exactly. I remember to have sent some scrip there to D. S. Fish, also to A. B. Daniels, and I don't just call to mind the names of any other persons now, nor the amount that I sent them—some 8 or 10 pieces, I think, to each of these parties and to other parties whose names I don't just call to mind now; at least I am under that impression. I know I sent to individuals frequently when I had orders for a single piece that the party wanted to locate himself. I sent quite a large amount that was located near Cañon City. I don't remember who it was sent to nor just when it was; it was about that time, though. I sent 15 or 20 pieces that were located near Cañon City. I remember where scrip was located more readily than I do the names of parties that figured in the transaction. That at Cañon City I remember more particularly, because I afterwards procured patents for the parties. Cañon City was within the Arkansas land district.

Int. 28. Now state the numbers of all you can of the scrip that you sent to Pueblo during the year 1873, besides the numbers you have already given.

Ans. All that I can find any record of is May 27th, as I said before; then June 30th, 1873, I write to C. A. Cook, Pueblo, that I send him that day 10 pieces A. C. scrip (agricultural college scrip), numbers 367 to 376, both inclusive, State of Florida. On August 25th, 1873, I write C. A. Cook that I send that day 8 pieces agricultural college scrip, numbers 847 to 855, both inclusive, State of Georgia. August 29th,

187 1873, I write C. A. Cook, Pueblo, that I send that day 8 pieces agricultural college scrip, numbers 847 to 855, both inclusive, State of Georgia. August 29, 1873, I write C. A. Cook, Pueblo, that I send that day 8 pieces agricultural college scrip, numbers 847 to 854, inclusive, State of Georgia. This is all the scrip I can find any record of having been sent C. A. Cook, on the 1st Nat'l Bank, during 1873. They are all in the same way. The letters were addressed to Cook as though the scrip was sent to him, but my recollection is that the scrip was to be sent to bank and the letters are merely notifications of it.

Int. 29. Is this all the scrip that you have a record of, or all that you sent to Pueblo?

Ans. All that I have a record of, although I am very certain that I sent other scrip to Pueblo before, and probably afterwards, under the same arrangement.

Int. 30. Give as definitely as you can the amount you sent before and after the dates you have mentioned, under the arrangement you have mentioned, of which you have no record.

Ans. My impression is that I commenced sending scrip to Pueblo some time in 1872, and from time to time I sent lots about like these which I have described until perhaps some time in 1874. I have no distinct recollection; could not pick out any particular time nor any particular quantity that was sent there further than I have stated.

Int. 31. What was your custom in regard to whether or not you kept a record of all the scrip that you sent.

188 Ans. Well, I stated that from 1871 to 1874 or '5 I kept no record except these letters that I have referred to. I might state further that one of these lots of scrip was sent by Mr. Todd in my absence, and the letter written by him. I was quite frequently away, when Todd or some one attending to my business would send the scrip.

Int. 32. Did Mr. Todd, or any one for you, keep a record of the amounts and dates when such scrip was sent to Pueblo or other places?

Ans. To the best of my knowledge, there is no other record than that I have stated of the scrip sent out or sold during that period, from 1871 to 1874, in my office.

Int. 33. Do you know whether or not Mr. Todd has a record that he kept?

Ans. I know he has not. All that business was done in my letter-book—all that pertained to my own individual business. It was a matter that he had no interest in, and all such business appears in my letter-book. I might state here that I depended on getting from the Colorado National Bank the scrip that I had received, from that and the record of the land office, to know where it had been located, if any question ever arises as to the validity of the scrip. For that reason I was not so particular about keeping a record of it as I had been formerly, or with land-

189 warrants, more particularly which I bought wherever I could get them.

Int. 34. Who paid you for the scrip that you sent to Pueblo?

Ans. I am under the impression that the pay came from Cook. I remember in one of these letters I acknowledge the receipt of a draft for the previous lot that was sent.

Int. 35. Was Mr. Cook the receiver of the land office at Pueblo during this time?

Ans. I understood he was, and suppose he was.

Int. 36. Did you sell any considerable quantity of scrip to any particular person in Denver during the year 1873?

Ans. Well, I can't state as to the exact time. I have sold considerable quantities. I don't remember any considerable quantities sold in Denver to any particular person that year. I sold some to A. B. Daniels here that was located here in this office. I think that must have been previous to 1873.

Int. 37. How did Mr. Cook pay you for that scrip? Did he remit the money or draft to any bank in this city; if so, what one?

Ans. I don't remember. My impression is that he sent me a draft on the bank at Pueblo, or that I received a draft on the bank at Pueblo—I could not say positively—or a check on that bank. It's only an impression. I cannot be positive.

Int. 38. Did you or not get any draft or drafts for different quan-

190 tities of that scrip on the 1st Nat'l Bank of Denver?

Ans. I have no recollection of getting such drafts, although I may have got them. I would not be likely to recollect it now.

Int. 39. Did you sell any scrip during the months of May, June, or July, 1873, to David H. Moffat, jr., or to any one for him, or to his use?

Ans. I have no recollection of having sold him any, nor any one about

the bank there, unless it might have been a piece or two. Occasionally I had an order for a piece or two from them. I remember to have sold a few pieces occasionally in that way to the 1st National Bank. Mr. Anderson would come up sometimes and order a piece of scrip, which I would let them have. Aside from that I have no recollection of selling any to the First National Bank.

Int. 40. Who was Mr. Anderson?

Ans. He was assistant cashier, or an officer, or a clerk in the bank.

Int. 41. State, as near as you can, the number of pieces you sold to the bank through Mr. Anderson or any employees of it.

Ans. Not to exceed three or four, and I don't remember when that was.

Int. 42. Did you ever at any particular time sell any quantity of scrip to the Kansas Pacific Railroad Company, or to any of its officers,
191 agents, or managers, during the summer of 1873?

Ans. I have no recollection of having done so.

Int. 43. Do you recollect that you did not?

Ans. I don't know how to answer that question.

Int. 44. You might have sold some to them and not recollect it. Have you a distinct impression that you did not?

Ans. I have a distinct impression that I did not. To the best of my knowledge I did not sell any scrip that I knew was connected with the road, unless it might have been a piece or two.

Int. 45. Did you know during the year 1873 David M. Edgerton?

Ans. No, sir; I did not.

Int. 46. Did you know Mr. Carr, president of the road?

Ans. I did know Mr. Carr then?

Int. 47. Did you ever have any conversation with Mr. Carr regarding the location of the lands on the Arkansas Valley branch of the Kansas Pacific road?

Ans. No, sir. I never had any conversation with him on that subject, nor with any one connected with the road, to my knowledge; nor, I might say, with any one in regard to the location of lands down there; that is, I mean as far as the time of location is concerned. Of course I have talked with people about it since this trouble came up—I mean prior to the location of the lands in controversy.

192 Int. 48. Have you talked or had any conversation with any of the parties to this suit since the location of the land regarding its location?

Ans. No, sir, I have not; none whatever.

Int. 49. Have you talked, since the location of the land, with any one interested in the matter of the location of the land?

Ans. No, sir. I have held no conversation whatever with anybody, except the attorneys connected with the matter; that is, referring to this matter.

Int. 50. If you know anything further relating to this controversy—that is, in reference to the location of scrip upon this land in controversy—you may state it.

Ans. I don't know anything further.

(Previous to the examination-in-chief of this witness it was agreed by and between the counsels in said case that the objection to the testimony of this witness, as well as that of the testimony of all witnesses

heretofore examined or hereafter to be examined before the master, should be subject to the objection that the same is irrelevant and not tend-
193 ing to prove the issues in the case, the said objection going to each and every question asked the several witnesses, and each and every answer thereto; the object and purpose of this stipulation being a matter of convenience to counsel and to save the repetition of said objection to the said several questions and the answers thereto.)

Cross-examination:

X-int. 1. You speak in your direct examination of having sold to the 1st National Bank, or to some officer or clerk connected therewith, a few pieces of agricultural college scrip from time to time, and as they received orders, as you understood, for such scrip. State, if you know, what agricultural scrip that was, having reference to the State in whose favor it was issued.

Ans. I do not know. I have had scrip from various States, and whatever I happened to have at the time I gave them. I have no idea what it was.

X-int. 2. State if such sales referred to in the last interrogatory and answer were made in the ordinary course of business, so far as you know.

Ans. They were. I think Mr. Anderson generally brought me the letter of the party, showing what was wanted, but I do not remem-
194 ber now who the parties were that wanted the scrip.

X-int. 3. Did you in the same general mode and manner sell agricultural college scrip of various States to the other bank in this town, or in Colorado, or to the officers, agents, or clerks of said banks?

Ans. Yes, sir; I have to many of them, probably most of them. I remember selling quite a quantity to the bank at Central City.

X-int. 4. State, as near as you can, the period of time within which you made the sales to said banks, or to some persons connected therewith.

Ans. I probably sold to banks since the first issue of scrip, which must have been in 1864 or '5, or the first that I got out here. I don't remember. I generally had it, and sold more or less in that way from time to time to 1875.

(Signed) DANIEL WITTER.

Subscribed by the said Daniel Witter in my presence, and by him sworn to before me, this 24th day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

The further taking of these depositions is now here adjourned
195 until to-morrow, Wednesday, the 25th day of July, at the hour of 12 o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court, District of Colorado, Eighth (8th) Judicial Circuit of the U. S.

WEDNESDAY, *July 25th*, 1877.

The taking of these depositions is now here resumed at the hour of 12 o'clock m., pursuant to adjournment.

And the said JEROME B. CHAFFEE, Esq., of the city of Denver, county

of Arapahoe, State of Colorado, being of the age of fifty-two (52) years, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy in the above-entitled cause, I did carefully examine the said Jerome B. Chaffee, and he did thereupon depose, testify, and say as follows, to wit:

Hon. Jerome B. Chaffee.

Int. 1. State your name, age, occupation, and residence.

196 Ans. My name is Jerome B. Chaffee; residence, Denver; age—born in 1825—52 years old; occupation, engaged in mining and banking.

Int. 2. You might state your official position.

Ans. I am Senator of the United States.

Int. 3. How long have you resided in the city of Denver and State of Colorado?

Ans. I have resided in the State and Territory something over seventeen years.

Int. 4. What was your occupation with regard to any official position you held during the year 1873?

Ans. I was Delegate in Congress for the Territory.

Int. 5. Do you know the parties to this suit; if so, how long have you known them, respectively?

Ans. I know Mr. Moffat. I have known him, I guess, about fifteen years.

Int. 6. Did you during the time you were Delegate, or was it your custom to apply at the Department of the Interior, at the request of parties who had made entries of land, to have the patents for which entries had been made delivered to you and then forward them to the patentees?

Ans. Well, it was customary for parties to write me, sending their duplicate receipts, and ask me to see to having their patents issued—hurried up. They thought I could get it quicker than if left to the routine of the office, although I never did get one quicker. They had certain rules there which, as far as I know, they never overruled at all.

197 Int. 7. Examine the instrument with red ink on the back, the register's and receiver's certificate number 545, in the name of Eli Turner, which purports to say that you applied to have the patent delivered to you for the patentee, and state anything that you may remember about applying for that patent.

Ans. Well, I don't remember anything about it at all.

Int. 8. Examine the papers now handed you, being the entry papers consisting of agricultural college scrip, affidavits of witnesses, and affidavits of claimants as to their right of pre-emption to the land, respectively numbered agricultural college scrip of the State of Florida 175, 550, 31, 30, 3, 185, 36, 178, 4, 187, 34, 177, 183, 7, 179, 35, 37, 200, 184, 174, 6, 33, 188, 5, 176, and 29, and state all you can with reference to whether or not you made the application to the Commissioner of the Land Office, in behalf of the patentees, to have the patents to be issued under the pre-emption entries made by the location of the said scrip sent to you for the patentees, and with reference to whether or not you filed the duplicate re-

ceipts, if you did apply to have the patents delivered to you. You can refer to the memorandums in red ink on the back of these papers from the Interior Department to refresh your recollection with reference to the matter.

Ans. I will state, first, that I never left a duplicate receipt asking to
198 have the patent sent to me in any cases that I know of, but I think it was customary with the office that whoever delivered or deposited the receipt to make a memorandum of it, and send the patent to that party, and if any of these were sent to me it was with that understanding. I don't remember anything at all about any of the identical papers, whether I deposited a duplicate receipt for them or not. I don't remember it from the papers. That is all I can answer about that. I cannot remember from these papers whether I deposited the receipts or not.

Int. 9. State anything that you may know with reference to the application for the patents in the pre-emption cases mentioned, and to whom the patents were delivered.

Ans. I don't know anything about it from the papers where the land is, or who the pre-emptors were, or anything about it at all. I don't know where this land is. I don't remember anything from these papers about the transaction whatever.

Int. 10. State anything that you know regarding the application for patents in these cases, and to whom they were delivered, from your recollection, aside from the papers which have been shown you.

Ans. I don't know anything whatever about these cases. I don't know what "these cases" mean.

Int. 11. Did you during the summer or fall of 1873 apply to
199 the Commissioner of the Land Office for any number of patents in behalf of Mr. David H. Moffat, jr.?

Ans. Yes, sir; I think I did—I did about that time.

Int. 12. You may state what you can recollect with reference to the number of patents you applied for to the Commissioner of the Land Office in behalf of Mr. Moffat.

Ans. As near as I remember it was about thirteen or fifteen pieces.

Int. 13. Did you receive from Mr. Moffat, or from any one, the duplicate receipts to be delivered to the Commissioner of the Land Office upon receiving the patents in the cases you have just mentioned for Mr. Moffat?

Ans. I received a letter while I was in Washington or New York—I think in New York, at the St. Nicholas Hotel—while I was East, anyway, I received a letter from Moffat or George W. Wells, who was then acting as assistant cashier of the bank; he is now dead. My recollection is it was from Moffat, although I am not positive about it, but from one of the two I received a letter enclosing from 13 to 15 duplicate receipts, which he said was land down on the Arkansas, and which he had bought and was anxious to have the patents issued, stating in the letter some reason, and I left that letter, with the duplicate receipts, with the Commissioner. I went over and saw the Commissioner. I remember
200 leaving a letter and the receipts with the Commissioner and asking him to issue the patents as soon as he could. I remember that he sent for some clerk and made a partial examination of the matter, and stated to me that it would be some two or three months before he could issue the

patents, they belonging to a regular series; that when a certain time expired, which was the rule of the office—I think it was five months after the land had been entered—there was a certain time that must elapse before a patent could be issued, and I know that he said they could not be issued until that time. That is all I done about it until the time expired, and these patents were issued and sent to me, and I sent them to Moffat.

Int. 14. State as near as you can recollect the date when you applied for the patents and delivered the receipts and the letter which you speak of for Mr. Moffat to the Commissioner.

Ans. It is impossible for me to remember that. I think it was along in the latter part of summer or early in the fall. My recollection is it would be later than July 25. I think it was the latter part of summer or early part of fall. It was a little while before J. Cooke's failure. I know I was there at that time. It was before that, probably a couple of weeks; it might not have been as long as that. I know I was East
201 during that time, and this happened while I was East.

Int. 15. State, as near as you can, the date when the patents were delivered to you, as you say, and you sent them to Mr. Moffat.

Ans. I have no means of recollecting that date. I guess it was that fall, or else in the early part of winter.

Int. 16. State as definitely as you can the number of patents that you applied for at any time during the summer or year of 1873 for Mr. Moffat.

Ans. I don't remember of any others at all, from my recollection, but from these papers it seems there was more sent to me. There was certainly no more than fifteen in the first letter I got. I think I have a memorandum somewhere. I know I looked at it some time ago.

Int. 17. Did you get more than one letter or make more than one application during that year for Mr. Moffat for patents?

Ans. I don't remember of doing so. I might have got other duplicate receipts and left them there in the same way.

Int. 18. You may state what you know with reference to what land was covered by the application for patents which you made at the time you mention in behalf of Mr. Moffat.

Ans. I only knew it was land down in the vicinity of Las Animas.

Int. 19. You say you don't remember positively of applying only
202 at one time for patents for Moffat and delivering duplicate receipts, which consisted of about 13 to 15, but you are not certain but you might have made other application'?

Ans. Yes, sir; I only remember of making application there once in regard to patents for Mr. Moffat, and that was the time I spoke of before; and I remember distinctly the Commissioner said it would be some—I think two or three—months yet before he could issue his patents.

Int. 20. If you remember any particular instructions that Mr. Moffat gave you regarding these particular patents and this land, or his relation to it, you may state what you know on that subject.

Ans. I remember nothing very distinctly; but I have a recollection that either in the letter transmitting the duplicates, or some subsequent or previous letter received about that time, that he told me that he had bought some land down there for the purpose of trying to have a depot located on it, or some part of it, and he was anxious to get his patents issued in order to secure this location. My recollection is that is the reason given for hurrying the patents up.

Int. 21. You may state what road or railroad company Mr. Moffat had reference to that he was endeavoring to have the depot located on some of this land he had purchased.

203 Ans. It was the Arkansas Valley Railway Company, from Kit Carson over to Las Animas.

Int. 22. Was not the Arkansas Valley Railway Company built and owned by the Kansas Pacific Railway Company, or built or owned or contracted by the same officers?

Ans. I don't know anything about it, and never did.

Int. 23. Do you not presume, although you cannot at this time recollect, from examining the thirty sets of pre-emption papers, accompanied by thirty pieces of agricultural scrip, the location of which has been mentioned, from the endorsements thereon in red ink made at the Land Office Department, that you applied for and received in behalf of some person or persons, Mr. Moffat or others, the patents in these cases?

(Defendant's counsel objects to the question asked to the witness, for the reason that it calls not for his knowledge in reference to the subject-matter of the question, but for his presumption in regard to the same.)

Ans. I know positively that I never received any thirty patents in New York at one time; neither did I ever receive so many duplicate receipts from Moffat or Wells at any one time.

Int. 24. Did you receive duplicate receipts, leave them at the office
204 of the Commissioner, and receive the patents in your own possession and transmit them to the parties applying, to any one except Moffat?

Ans. Yes, I did, frequently, from a great many.

Int. 25. If you know anything further in regard to the application for and delivery of patents, or the entry or the location of the agricultural scrip referred to heretofore in your deposition and in the papers shown you regarding the land in controversy, you may state it.

Ans. I never did know anything about the entries of the land, and I do not remember anything further about obtaining the patents. I never knew before that there was 30 of these cases. I have not the slightest remembrance of ever getting anything except that first lot, it seems to me, in New York, and that I got the balance of them when I was over there in Washington; but I thought there was only 24 or 25 pieces or 27 pieces.

Cross-examination:

X-int. 1. I will ask you, Mr. Chaffee, if while you were Delegate to Congress from the then Territory of Colorado, including the year 1873, if it was not a common thing for your constituents throughout the Territory at large to transmit to you receipts of the pre-emption or
205 entry of land at the various land offices of the then Territory of Colorado, and to request you to apply at the Department of the Interior, or the proper bureau of said Department, for patents to the land described in said receipts?

Ans. My constituents did frequently make such applications, under the supposition, I suppose, that I could hurry them up. I know they used to write me that they thought I could get their patents, but I never got a patent in my life from that Department before the regular time came round.

X-int. 2. Was it or was it not your practice to formally comply with such requests by making a proper application?

Ans. I usually in such cases went up to the Department and left the duplicate receipt with the Commissioner, and in some cases I would ascertain the length of time before the patents could be issued and write to the parties sending the receipts when the patent would be issued. That is what I usually done. That is what I done with Moffat.

X-int. 3. You speak in your direct examination of having at some time made an application for patents to land, either at the request of Mr. Moffat or Mr. Geo. W. Wells; have you any recollection of the land as described in the duplicate receipts for which said patents were desired?

206 Ans. No, I have not.

X-int. 4. Do you know of your own knowledge that you ever applied at the request of Mr. Moffat or Mr. Wells for patents to the land described in the duplicate receipts of the land office of the Arkansas Valley land district of Colorado, which have been shown to you by the counsel for the Government in this case?

Ans. I cannot swear that I know of my own knowledge from these papers.

X-int. 5. All you know, then, is that you did at some time make an application for patents at the request above stated, but you do not know, and cannot give of your own knowledge, the description of the land for which a patent or patents were desired?

Ans. That is all I know about it; I only know I made application for some patents.

X-int. 6. Then it may be that the land for which you applied for patents, as before stated, is other and different land from this described in the documents which have been shown to you on this examination?

Ans. My opinion is it is part of some of this land. If this land or these papers cover land about Las Animas I expect it is part of the land, but I do not know of my own knowledge anything about it from these papers.

207 X-int. 7. Can you identify the land for which you made the said application for patents?

Ans. No, I cannot; I cannot tell from own knowledge whether it is the land described by these papers or not.

X-int. 8. If another package of papers were shown to your coming from the same source, and having like endorsements as upon these which have been shown to you, and describing other and different parcels of land, would you then undertake to say whether you had applied in behalf of Mr. Moffat or Mr. Wells for the patents for the lands described in the one parcel or the other, from any knowledge that you have independent of what the papers themselves might show?

Ans. No, I could not; I could not tell; I could not tell by looking at these papers whether it was down on the Arkansas or on the Platte, and I don't believe you could either.

X-int. 9. Will you, then, undertake to say positively that you made the application concerning which you have spoken for a patent or patents to the identical land described in the papers which have been shown you, or is it a matter of conjecture on your part as to whether you made such application for these identical lands?

Ans. I can't swear that I made application for patents as described in these papers. I only swear I made application for a number of patents for some land down on the Arkansas somewhere, down about
208 Las Animas, reported to me to be there.

X-int. 10. Then all you mean to say is that at the request of Moffat or Wells, and which one you do not remember, you did make a merely formal application to the Commissioner of the General Land Office at Washington for patents to certain lands, which you now remember were stated by the applicant to be located somewhere down in the Arkansas Valley in the then Territory of Colorado?

Ans. That is all.

Redirect examination:

Int. 1. What are your business relations with Mr. Moffat, or were they, at this time?

Ans. In the bank he was cashier and I was president.

(Signed) JEROME B. CHAFFEE.

Sworn to by the honorable Jerome B. Chaffee before me, and by him subscribed in my presence, this 28th day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

The further taking of these depositions is now here adjourned
209 until to-morrow, at the hour of ten (10) o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery.

THURSDAY, *July 26th, A. D.* 1877.

The taking of these depositions is now here resumed at the hour of ten o'clock a. m., pursuant to adjournment.

And the said SAMUEL S. LANDON, of the city of Denver, in the county of Arapahoe, State of Colorado, being of the age of about thirty-four (34) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matters of controversy or proceedings in chancery in the above-entitled cause, I did carefully examine the said Samuel S. Landon, and he did thereupon depose, testify, and say as follows, to wit:

Sam. S. Landon.

Int. 1. State your name, age, occupation, and residence.

Ans. Sam. S. Landon; 34 years old; abstractor of titles; residence, Denver, Colorado.

Int. 2. How long have you resided in Denver?

Ans. Since June, 1870.

210 Int. 3. Were you a notary public during the year 1873 for the county of Arapahoe, State of Colorado, duly commissioned and qualified?

Ans. I was, sir.

Int. 4. Examine the certified copies of deeds now shown you (hands papers to witness) purporting to have been executed by Philip Quinlan, Sam. A. Long, Orton Spencer, Slicer B. Evans, Amos K. Howe, Kaleb Wilson, and Charles F. Walling to Henry A. Perry and Thomas Harris, and state whether or not you as a notary public took the acknowledgements and signed the certificates of acknowledgements to these deeds, and purporting to have been acknowledged on the 30th day of May, the 3rd day of June, the 24th day of May, the 21st day of May, the 23rd day of May, the 2nd day of June, the 12th day of June, 1873, by said parties.

Ans. Yes, sir; I believe I did. I have no reason to think the contrary.

Int. 5. Examine the deeds now handed you, purporting to have been executed, two of them by Henry H. Perry to David H. Moffat, and the other one by Thomas Harris to David H. Moffat, jr., and purporting to have been acknowledged on the 26th day of June, 1873, the 21st day of June, 1873, and 23rd day of June, 1873, and state whether or not you took the acknowledgements of these deeds?

Ans. All that have my name to I have no reason to doubt that
211 I took. The one from Harris to Moffat I believe I took it.

Int. 6. Did you know Edwin H. Kellogg as a notary public of this county, about the 21st of June, 1873?

Ans. I knew him, but I do not know how long he has been a notary. I remember of his living here.

Int. 7. Did you know Joseph B. Cass about the 23rd of June, 1875?

Ans. Yes, sir.

Int. 8. Know whether he was acting as a notary?

Ans. I do not. He was a notary, but I don't know whether he was at that time or not. I remember he was at some time, and I have no real knowledge of that, other than I have seen his name signed to deeds.

Int. 9. When you say you think you took these acknowledgements because your name appears attached as notary to the certificate of acknowledgement of the deeds, did the parties appear before you and acknowledge the same?

Ans. That would be a hard question for me to answer; some one appeared before me and acknowledged the deeds.

Int. 10. Did you keep the record-book required by the statute in such case, and make the entries required therein of all the acknowledgements that you took to deeds during the time that these deeds purport to have been acknowledged?

212 Ans. I kept no record. I never kept much of any record. I have kept a record of protests only, and of nothing else. I cannot swear as to whether I had a record in 1873 or not. I did have some record in a book which I kept on my desk for the purpose of keeping memorandums in. I tore the leaves out of that book and kept them under my desk for a long time, but I find that I have a record now, or a partial record, in December, '71, January, February, March, April, May, June, '72, April, May, June, 1874, January, May, July, and August, 1876, part of March, 1877, and I guess part of September, 1876, but I never kept a record regularly. The reason I kept this first record was because Jones and I was in partner-

ship. After he went away I kept no record at all. I have a record of a portion of 1872, none of 1874, none of 1875, none of '75, part of '76, and three months of 1877.

Int. 11. Did you keep this partial record during the months of May and June, 1873?

Ans. No, I do not think I did. I had some portions of my record which I tore out, and lost it; at least I cannot find it, for a number of years. I must confess I never kept a record; that is the true fact of it.

Int. 12. Then you say you have no record as notary that you have preserved, that you can produce here, which was made and kept during the time of the acknowledgements referred to in these deeds?

213 Ans. Yes, sir; because, you see, from the records I have now I have kept them in a very unbusiness-like manner.

Int. 13. State all that you can remember with reference to the acknowledgement of these papers handed you—deeds—in regard to taking the acknowledgements of them, and what you remember with regard to who produced the parties, if any, or any recollection you may have in regard to the matter.

Ans. I have no recollection at all; like every other business transaction, I did not suppose it would require any attention. I could not tell about the acknowledgements I took two weeks ago.

Int. 14. What was your custom during the time mentioned when taking an acknowledgement with reference to the evidence you required of the identification of the party presenting himself to acknowledge a deed or other instrument?

Ans. Well, now, that question I cannot answer. There is a thousand and one answers to it. In some cases I required evidence and in some cases I did not. Now, if you were to bring in a man and say, "Here is a man that wants to acknowledge a deed," I would ask him if he acknowledged it, and if he said he did, I would take his acknowledgement. Sometimes I would take an acknowledgement without identifica-

214 tion, and sometimes I would not.

Int. 15. Then you sometimes took acknowledgements of parties when they presented themselves with a deed which they said they had executed alone, and required no identification of no other party?

Ans. Yes, sir; I did.

Int. 16. Is it not probable that you took the acknowledgements of the deeds that have been handed you by some parties presenting themselves, and you not requiring any evidence of who they were, or whether they bore in reality the names mentioned in the instrument?

Ans. There certainly must be. If I had done it in one case of course I might have in another; of course there might be a probability that that might happen.

Int. 17. Was it your custom to sign a certificate of acknowledgement at the request of any person you knew who did business with you, on their presenting a deed or instrument and telling you that the man had signed it and did acknowledge it, without producing the man himself?

Ans. No, sir; I have taken acknowledgements from Mr. Witter and filled them out for him and laid them away until the time he might want to use them—that is, in his name—of his own property. I remem-

215 ber a case where John W. Smith's wife sent a note to me acknowl-

edging a deed, and I took the acknowledgement without her appearing. This is a case I distinctly remember. I took this because I was pretty positive that it was all right; her husband brought the note himself.

Int. 18. Did you have any knowledge, by information or otherwise, at this time, May or June, 1873, or before or after, regarding the entry of the land called, commonly called, the Las Animas land-grab?

Ans. No, sir; I never knew anything about it until I was subpœnaed at Pueblo on the part of the Government.

(Signed) SAM. S. LANDON.

Sworn to before me by the said Sam. S. Landon, and by him subscribed in my presence, this 3d day of August, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

And the further taking of these depositions was thereupon adjourned until to-morrow, Friday, the twenty-seventh (27th) day of July,
216 A. D. 1877, at the hour of 10 o'clock a. m.

HENRY C. F. JENSEN,
Master in Chancery for the United States Circuit Court in the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

FRIDAY, *July 27th, A. D.* 1877.

The taking of these depositions is now here resumed at the hour of 10 o'clock a. m., pursuant to adjournment.

And the said RICHARD SIMPSON, of the town of Ouray, county of Ouray, State of Colorado, being of the age of about forty-six (46) years, and being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery or matters of controversy in the above-entitled cause, I did carefully examine the said Richard Simpson, and he did thereupon depose, testify, and say as follows, to wit:

Richard Simpson.

217 Int. 1. State your name, age, occupation, and residence.

Ans. Richard Simpson; 46 years old in October; I am now selling goods in San Juan; residence Ouray, Ouray County.

Int. 2. Have you resided in Las Animas, Bent County, Colorado? If so, state when and how long you resided there.

Ans. I resided in Bent County since the winter of 1869–'70. I came there just before January, 1870, and resided there until about the 27th of last April.

Int. 3. What official position have you or did you hold in Bent County during the time you resided there?

Ans. I was county clerk of the county there. I was elected in the fall

of 1874, and at last fall's election also. I was county clerk at the time I left, and am still county clerk there.

Int. 4. What official position did you hold or occupy during the summer or fall of 1873 in that county?

Ans. I was acting as deputy clerk of the county at that time.

Int. 5. Did you, during the summer or fall of 1873, as deputy clerk and county recorder, have charge of the records of the office, and attend to most of the business done in the office?

Ans. I did, sir.

Int. 6. State what you know, if anything, about a man by the
218, 219 name of Samuel A. Hutchins bringing a number of patents and deeds to be recorded in the Bent County recorder's office during the fall of 1873.

Ans. Yes, sir; Hutchins in that fall brought some patents and deeds there for record when I was acting as deputy clerk at that time, and I recorded them all, I think, but one or two, which recorded, but I am not sure. I done all the recording except when I was out of the office to my meals.

Int. 7. How many patents and deeds were there?

Ans. About seven patents is my recollection, and deeds from the patentees to Harris and Perry, and from Harris and Perry to David H. Moffat, jr. I don't remember the number of deeds; it seems to me there was about twenty or from twenty to twenty-five, but I could not say as to the number.

Int. 8. Examine the certified copies of patents now handed you from the records of the recorder's office of Bent County, and state, if you know, whether or not they are certified copies of the patents that you have referred to as being brought there by Hutchins to have recorded.

Ans. Yes, sir; I made the record in the first place, and made these copies.

Int. 9. State who are the patentees in these patents from the United States.

220 Ans. Amos K. Howe, Charles F. Walling, Slicer B. Evans, Samuel A. Long, Caleb Wilson, Phillip Quinlan, Orton Spencer, as appears from the patents which I recorded.

Int. 10. Examine the certified copies of deeds now handed you, and state what you know about these papers being certified copies of the deeds that Hutchins brought there at the time you speak of, and that you recorded.

Ans. Yes, sir; the deeds that were transferred by the patentees to Harris and Perry. They were all filed and recorded at the same time for the same amount of land, the land that was recorded in the seven patents, and an additional amount of land I believe also; that is, they deeded a greater amount of land than was included in those 7 patents & 7 deeds.

Int. 11. State what land is included in the seven deeds that you have last referred to as being from the said patentees to Thomas Harris and Henry H. Perry?

Ans. It is land in sections 10 and 3, township 23, range 52, on which the town site of Las Animas is located.

Int. 12. Examine the three certified copies of deeds I hand you purporting to have been made by—two of them—*by* Henry H. Perry to David

H. Moffat, jr., and the other one by Thomas Harris to David H.
221 Moffat, jr., and state what you know about these certified copies of deeds with reference to whether you recorded them or the original deeds, and what land they convey?

Ans. I recorded the deeds; I could not tell exactly what land; the lands lie there in the valley around Las Animas, in township 23, and range 52 and 53, most of it. This includes all the land in the first seven patents, and a great deal more; I don't remember the amount; it run up to what we term the lime-kiln, which was at the upper end of the valley above Las Animas. This deed from Harris to Moffat the land is all in township 23, 53, in different sections.

Int. 13. Do you know where 23, 53 is?

Ans. It is in Bent County in this State.

Int. 14. Whereabouts?

Ans. Right on the Arkansas River, just west of West Las Animas. The lands mentioned in these deeds comprises the town of West Las Animas in Bent County, and land adjoining in the bottom, extending up the river west.

Int. 15. State what you know about Mr. Hutchins, when he brought those deeds and patents there to have them recorded, desiring to have them recorded as soon as possible, or with reference to whether he refused to have the papers left there and desired to take them away with him, and whether he waited for them.

222 Ans. I don't know that Hutchins refused to leave the deeds there, but he was very anxious to have them recorded and take them away with him. I met him in the morning as I was going to breakfast, and was introduced to him by a friend, and he said he wanted to have it done immediately, and I went to work upon the deeds. He wanted it done at once, and seemed to me, as I thought, a little fearful to leave the deeds there. I told him that there was no trouble about it at all; that there would be no interference with the office, but he insisted upon having it done so that he could take the deeds with him, and I went to work and recorded the deeds just as fast as I could do so, and finished up the record, and he paid me for them and took them with him and left.

Int. 16. Did he offer you any extra compensation over the regular recorder's fees?

Ans. He told me he would give me extra pay in order to get them as soon as possible. I told him I would not charge him anything extra, and did not charge him anything, only the prices marked upon the records.

Int. 17. State what you know about in whose behalf, or at whose request, or in whose employ Mr. Hutchins was, or for whom he had these deeds recorded.

223 Ans. So far as in whose interest they were being recorded, I only judge from the deeds themselves. He might have stated Moffat sent them down, or he might not; I do not remember; and of course my mind was made up that it was in the interest of Moffat that he was sent there, but whether I got that from the deeds or from what he said I don't know.

Int. 18. How well acquainted have you been in Bent County since 1869?

Ans. Well, sir, I have been in a position there to get pretty well acquainted with most every one of that particular section of country immedi-

ately around there. I have been there since 1870, and about five years of the time I have been in that office—nearly five years. The office at the time this occurred was down at the old town.

Int. 19. State what you know about there having been any improvements put upon or settlements made upon the land described in these deeds and patents during the year 1872 or 1873.

Ans. I don't remember of seeing any improvements upon that land in question until about the time—in the fall of 1873—this branch road was building from Carson; when it got over about 8 miles from our town
224 it turned in the direction of this land, and some men from our town went up there and built cabins. This is all the improvements I recollect of until after the town grew up. I used to pass up and down the bottom occasionally, and would have noticed improvements if there was any there, and I never noticed any until about that time, and they was made by men going up there and taking up claims, thinking the road would run in there from the turn of the road.

Int. 20. Did you ever know the following-named parties, namely, Eli Turner, George Taylor, Henry D. Simpson, Jacob Linden, Arthur McLane, Philip Quinlan, Amos K. Howe, Phelps Johnson, Samuel A. Johnson, James Rogers, Samuel R. Bruse, Richard Seymore, James C. Hall, Caleb Wells, Orton Spencer, Charles M. Clark, Michael Quinlan, Charles R. Day, Stearl Sims, Slicer B. Evans, Anson Beck, O. R. Peasley, Charles F. Wallen, Samuel Cutler, Simeon D. Porter, Henry H. Perry, James Irwin, Alex. J. Fariman, Jarred Howe, Thomas Harris, as having lived on or upon this land mentioned, or having settled upon the land or made any improvements thereon, or lived in the vicinity of this land?

225 Ans. I do not know any of the parties at all; if they lived there I knew nothing about it.

Int. 21. State what your opportunity was for knowing if these parties lived there or in that vicinity, or settled upon or put improvements upon this land.

Ans. Well, sir; I was living right there at the county seat. I was occasionally over the land, and I know there was no improvements there. I never saw or heard of one of these parties in the country.

Cross-examination:

X-int. 1. State, if you know, if Mr. Hutchins, at the time that he gave you the patents and deeds to be recorded, concerning which you have testified, had any other documents which he desired to have recorded in his own behalf?

Ans. I cannot state as to the time, whether that time or not, but believe it was at the same time that he filed a lien on the Arkansas branch of the road that he had built over; he built the road over from Kit Carson to Las Animas. My recollection is that he had this paper recorded at the same time.

X-int. 2. Your statement as to what deeds and patents were recorded is based, as I understand it, upon your recollection, assisted by the certified copies which have been shown you?

226 Ans. Yes, sir, altogether; I recollect something about it as to time, &c.

X-int. 3. State, if you remember, whether or not it was an unusual matter for persons desiring to have papers recorded to request that the

same should be recorded as soon as possible and returned to the parties asking for the recording of the same, having reference of course to the time during which you were deputy recorder of Bent County.

Ans. No, sir; it was frequently the case that parties would come in with papers for record and want them recorded at once; wanted to take them out with them; it was not an uncommon thing at all. A great many persons that bring papers in there seem to think they have to stay and watch them until they are recorded.

X-int. 4. State if at any time during the year 1873 you had any knowledge from public prints or rumor or otherwise of there having been trouble in regard to and the destruction of records in the county of Las Animas, in this State (and then Territory of Colorado). If so, state your knowledge of such trouble and how you obtained your information of the same.

Ans. It seems to me there was some records destroyed in Las Animas County, but I could not state as to the time, whether it was be-
227 fore or after June, 1873.

Int. 5. Was the matter of the destruction of the said records in Las Animas County a matter of public notoriety, either by rumor or mention being made of the same in the public prints?

Ans. My recollection is I saw it in the papers of the destruction or stealing of the records there; that is, in Las Animas County, Trinidad; I know I heard it or read it. I think I saw it in the papers. I know it was common report and rumor at the time. It seems to me also that there was some burning of records first, and afterwards a stealing of some records, a year or two afterwards.

X-int. 6. State, if you know, whether there is and whether there then was within the Territory of Colorado (now State) a county named Las Animas, as well as of a town of the same name in a different county.

Ans. Yes, sir; there was a county of Las Animas, and a town of Las Animas in a different county from it.

(Signed) RICHARD SIMPSON.

Subscribed by the said Richard Simpson in my presence, and by him sworn to before me, this twenty-seventh (27th) day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
228 *Master in Chancery for the United States Circuit Court,*
District of Colorado, Eighth (8th) Judicial Circuit
of the United States of America.

I, Henry C. F. Jensen, master in chancery of this court, duly appointed by the circuit court of the United States for the district of Colorado, in the eighth judicial circuit, do hereby certify that on the several days named in the depositions and testimony hereto annexed, I was attended in my office, in room number fourteen, in Good's Block, corner of Larimer and Sixteenth streets, in the city of Denver, Arapahoe County, Colorado, by G. G. Symes, esq., special counsel for the United States, and Alfred Sayer, esq., solicitor and counsel for the defendants, and the witnesses aforesaid; that the said witnesses were duly sworn and examined and the said testimony and depositions were reduced to writing and read to the said witnesses, and by them subscribed and sworn to in my presence; and that

exhibits marked "A" and "B" were introduced in evidence during
229 the taking of the testimony of the said witness, George H. Hill.

All of which is respectfully submitted.

Dated this first day of October, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery.

(Endorsed:) No. 9. In the circuit court for the district of Colorado, eighth judicial circuit of the United States. The United States versus David H. Moffat, jr., et als. Depositions and testimony of witnesses taken and reported by H. C. F. Jensen, master in chancery. Master's fees, 891.10; paid by plaintiff. Filed October 15th, A. D. 1877. (Signed) Edward F. Bishop, clerk.

230 And afterwards, and on, to wit, the fourteenth day of January, A. D. 1878, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

THE UNITED STATES
vs.
IRVING W. STANTON ET AL. } 9. In chancery. To compel surrender of patent.

At this day comes W. S. Decker, esq., district attorney, who prosecutes the pleas of the United States in this behalf; and the said defendants, by A. Sayre, esq., their solicitor, also come; and thereupon, as well the complainant as the said defendants, now here consenting thereto:

It is ordered that this cause stand submitted to the court, the said complainant to file herein its written argument within twenty-five (25) days from this day, the said defendants to file herein their answer to the said argument within thirty (30) days after said argument is filed, and the said complainant to reply to the said answer within ten days after the said answer is filed.

231 (Envelope indorsed:) M. 10848; Div. G., = 15; C. B. P. 192; R. and R. No. 546; A. C. S. No. 176; State of Fla., L. O. Pueblo, Col. Terry. Name, Simeon D. Porter; tract, lots 1 and 2, of 6 W., N. ½ of NE. ¼. Docket No. . Page . Action .

Agricultural college, act of July 2, 1862.

232 (R. & R. No. 546.)

REGISTER'S OFFICE,
Pueblo, Colorado, May 16th, 1873.

Scrip No. 176, State of Florida, in the name of Simeon D. Porter, has this day been located by him upon the lots 1 and 2 of section 6 and N. ½ of NE. quarter of section 7, in township 23 south, of range 52 west.

Contents of tract located 160 acres.

IRVING W. STANTON, *Register.*

(Across the face:) P. A., 1841.

For value received, , to whom the within certificate of

location was issued, do hereby sell and assign unto , and to heirs and assigns forever, the said certificate of location, and the scrip and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal this day of , 186 .

[SEAL.]

Attest:

STATE OF ,
County of :

On this day of , 186 , before me, personally came , to me well known, and acknowledged the foregoing assignment to be act and deed, and I certify that the said is the identical person to whom the within-named scrip was issued.

233 Agricultural college, act of July 2, 1862.

(Duplicate, excess receipt, No. 720.)

RECEIVER'S OFFICE AT PUEBLO, COLORADO,
May 16, 1873.

Received from Simeon D. Porter, of Bent County, Colorado, the sum of eleven dollars and .06 cents, being in full for eight acres and 85 hundredths of lots 1 and 2 sec. 6 and N. ½ of NE. ¼ of section No. 7, in township No. 23 south, of range No. 52 west, being excess in said tract over the area located in virtue of agricultural college scrip certificate No. 176, State of Florida.

CHAS. A. COOK, *Receiver.*

R. & R's No. 546.]
$11.06.]

234 *Non-mineral affidavit.*

COUNTY OF PUEBLO,
Territory of Colorado, ss:

Simeon D. Porter, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the lots 1 and 2, sec. 6, and N. ½ NE. ¼ sec. 7, T. 23 S., R. 52 west; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes.

SIMEON D. PORTER.

Subscribed and sworn to before me this 16 day of May, A. D. 1873, and I hereby certify that the foregoing affidavit was read to the said Simeon D. Porter previous to his name being subscribed thereto; and that deponent appears a respectable person, to whose affidavit full faith and credit should be given.

IRVING W. STANTON, *Register.*

A true copy.
(Signed) EDWARD F. BISHOP, *Clerk.*

235 Agricultural college act of July 2, 1862.

(Agricultural scrip, No. 176, State of Florida. Register and receiver's No., 546.)

LAND OFFICE,
Pueblo, Colorado, May 16th, 1873.

We hereby certify that the attached scrip No. 176, State of Florida, was on this day received at this office from Simeon D. Porter, of Bent County, Territory of Colorado.

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

I, Simeon D. Porter, of Bent County, Territory of Colorado, hereby apply to locate and do locate the lots 1 and 2, section 6, and N. ½ of NE. quarter of section No. 7, in township No. 23 south, of range No. 52 west, in the district of lands subject to sale at the land office at Pueblo, Colorado, containing 168.85 acres, in satisfaction of the attached scrip numbered 176, State of Florida, issued under act of July 2, 1862.

Witness my hand this 16th day of May, A. D. 1873.

SIMEON D. PORTER.

Attest:
IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

I request the patent to be sent to

LAND OFFICE,
Pueblo, Colorado, May 16th, 1873.

We hereby certify that the above location is correct, being in accordance with law and instructions.

CHAS. A. COOK, *Receiver.*
IRVING W. STANTON, *Register.*

(Written across the face:) P. A. 1841. Excess paid per receipt No. 720.

A true copy.
(Signed) EDWARD F. BISHOP, *Clerk.*

(Indorsed:) Register and receiver's No., 546; agricultural college scrip, No. 176; located May 16th, 1873, by Simeon D. Porter, at Pueblo, Colorado. Sec. 6 & 7, town. 23 S., range 52 W. Pat. sent to Hon. J. B. Chaffee, St. Nicholas Hotel, N. Y. D. S. No. 1844. Filed May 16, 1873. Set-

tled May 12, 1872. Unoffered. No conflicts. Within claim Vigil & St. Vrain. Lots 1 & 2, sec. 6, should be described as South Ark. River, D. K. July 25, '73. Approved Oct. 3rd, 1873. Brown. Describe land as south of the Arkansas River in patent. W. W. Curtis, ex. June 20, '73. C. B. S. Ent. on S. K. 33, S. & S. W. (27.) (Stamped:) Transmitted Oct. 17, 1873.

236 We, Anson Beck and James C. Hall, of Bent County, Colorado Territory, do solemnly swear that Simeon D. Porter is a citizen of the United States, and the head of a family consisting of a wife and three children, and is an inhabitant of the lots 1 and 2, sec. 6, and N. ½ of NE. quarter of section No. 7, of township No. 23 south, of range No. 52 west, and that no other person resided upon the said land entitled to the right of pre-emption; that the said Simeon D. Porter entered upon and made a settlement in person on the said land since the 4 day of September, 1841, to wit, on the 12th day of *of* May, 1872; he has built a comfortable frame dwelling-house on said land one and a half stories high, about 20 by 20 feet, with four rooms and a kitchen, several doors and windows, board floors and shingle roof, and has lived in the said house and made it his exclusive home from the first day of June, 1872, till the present time; that he did not remove from his own land, within the Territory of Colorado, to make the settlement above referred to; and that he has since said settlement plowed, fenced, and cultivated about 15 acres of said land; he has taken out an irrigating ditch, built a stable, a large cattle corral, a chicken house, a cellar, and other necessary outbuildings. Claimant uses the land mostly for stock purposes.

ANSON BECK.
JAMES C. HALL.

I, Irving W. Stanton, register, do hereby certify that the above affidavit was taken and subscribed before me this 16 day of May, A. D. 1873.

IRVING W. STANTON, *Register.*

We certify that Anson Beck and James C. Hall, whose names subscribed to the foregoing affidavit, are persons of respectability.

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

A true copy.
(Signed) EDWARD F. BISHOP, *Clerk.*

(Indorsed:) Certificate No. 546. Proof of right of pre-emption. Sec. 6 & 7, T. 23 S., R. 52 W. Pre-emption act 4th September, 1841. Allowed this 16th day of May, 1873. Irving W. Stanton, register; Chas. A. Cook, receiver.

I, Simeon D. Porter, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights," approved September 4, 1841, to the lots 1 and 2, sec. 6, & N. ½ NE. quarter of section number 7, of township number 23 south, of range number 52 west, subject to sale at the land office at Pueblo, Colorado Territory, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of any land

in any State or Territory of the United States; nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States would inure, in whole or in part, to the benefit of any person except myself.

SIMEON D. PORTER.

I, Irving W. Stanton, register of the land office, Pueblo, Colorado Territory, do hereby certify that the above affidavit was taken and subscribed before me this 16th day of May, A. D. 1873.

IRVING W. STANTON.

237 Land scrip No. 176. For "one quarter section." Genuine. D. McC. Colleges for agriculture and mechanic arts. Act of Congress July 2, 1862. For State of Florida.

Whereas, in pursuance of the act of Congress approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," the State of Florida has accepted the grant provided by the said act, and under the same has consequently a legal claim to ninety thousand acres not locatable by the State itself, but liable to transfer, and may be located by the assignees of said State according to assignment, attested by two witnesses in the form on the back of this instrument, the locations by assignees in satisfaction of the claim above mentioned to be made in virtue of a regular series of scrip, a part of which is this land scrip No. 176, for one quarter section:

Therefore be it known that this scrip, when duly assigned and attested by two witnesses, under such authority of the said State as the act
238 of the legislature thereof may designate, may be surrendered at any land office of the United States in satisfaction of a location of "one quarter of a section," or for any quantity in one legal subdivision less than one quarter section where such location is taken in full for one quarter section, the location to be restricted to vacant public lands subject to entry and private sale at $1.25 per acre, mineral lands excluded; and whilst the aggregate location of all the claims under the said act may be taken in any of the Territories without limitation as to the quantity located in any one of them, yet in virtue of express limitation in the statute "not more than one million acres" of the total aggregate scrip issue under said act can be located within the limits of any one of the States.

Given under my hand and seal of the Department of the Interior, on the 23rd day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

[SEAL.] R. P. CAMM,(?)
Acting Sec'y of the Interior.

Recorded, vol. 205, page 151.

WILLIS DRUMMOND,
Commissioner of the General Land Office.

(On the margin:) W. K. Mendenhall.

239 (Endorsed on back:)

STATE OF FLORIDA,
City Tallahassee, March 27th, 1873.

In virtue of the act of the legislature of the State of Florida, chapter 1166, session laws of Florida, approved February 18th, 1870, and amended 1872, a copy of which has been filed in the General Land Office, at Washington, D. C.:

I, William D. Bloxham, vice-president of the Florida Agricultural College, for value received, do hereby assign and transfer to Simeon D. Porter, of Bent County, Territory of Colorado, this scrip No. 176, and authorize the said assignee to locate the same upon the terms and conditions specified in said scrip.

Given under my hand and seal this 27th day of March, A. D. 1873.

[SEAL.] W. D. BLOXHAM,
Vice-President of the Florida Agricultural College.

Attest:
G. F. LEWIS.
WM. E. LEWIS.

240 (Stamped:) General Land Office, located and patented.

A true copy.
(Signed) EDWARD F. BISHOP, *Clerk.*

241 (Envelope indorsed:) M. 10848; Div. G., = 30; C. B. P. 192; R. & R. No. 526; A. C. S. No. 4. State of Fla. L. O. Pueblo, Col. Ter'y. Name, Samuel A. Long; tract, lots 3 & 4 & N. SW. 4. 3.23 S., 52 W. Docket No. . Page . Action .

242 (R. & R. No. 526.)

Agricultural college act of July 2, 1862.

REGISTER'S OFFICE,
Pueblo, Colorado, May 8, 1873.

Scrip No. 4, State of Florida, in the name of Samuel A. Long, has this day been located by him upon by him upon the lots 3 and 4, and N. ½ of SW. quarter of section 3 south, of range 52 west.

Contents of tract located, 160 acres.

IRVING W. STANTON, *Register.*

(Across the face:) P. A. 1841.

A true copy:
(Signed) EDWARD F. BISHOP, *Clerk.*

For value received, , to whom the within certificate of location was issued, do hereby sell and assign unto and to heirs and assigns forever, the said certificate of location, and the scrip and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal this day of , 186 .

[SEAL.]

Attest:

STATE OF , *County of* :

On this day of , 186 , before me, personally came , to me well known, and acknowledged the foregoing assignment to be act and deed, and I certify that the said is the identical person to whom the within-named scrip was issued.

243 Agricultural college act of July 2, 1862.

R. 54296.

(Duplicate excess receipt No. 694.)

RECEIVER'S OFFICE AT PUEBLO, COLORADO,
May 8, 1873.

Received from Samuel A. Long, of Bent County, Colorado, the sum of thirty-two dollars and 11 cents, being in full for twenty-five acres and 69 hundredths of lots 3 and 4, and N. ½ of SW. ¼ of section No. 3, in township No. 23 south, of range No. 52 west, being excess in said tract over the area located in virtue of agricultural college scrip certificate No. 4, State of Florida.

CHAS. A. COOK, *Receiver.*

R. & R.'s. No. 526.
832.11.

A true copy.
(Signed) EDWARD F. BISHOP, *Clerk.*

244 *Non-mineral affidavit.*

COUNTY OF PUEBLO,
Territory of Colorado, ss:

Samuel A. Long, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the lots 3 and 4 and N. ½ SW. ¼ sec. 3, T. 23 S., R. 52 W.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes.

SAMUEL A. LONG.

Subscribed and sworn to before me this 8th day of May, A. D. 1873,

and I hereby certify that the foregoing affidavit was read to the said Samuel A. Long previous to his name being subscribed thereto; and that deponent appears a respectable person to whose affidavit full faith and credit should be given.

IRVING W. STANTON, *Register.*

A true copy.
(Signed) EDWARD F. BISHOP, *Clerk.*

245 Agricultural college act of July 2, 1862.

(Agricultural scrip, No. 4, State of Florida. Register and receiver's No., 526.)

LAND OFFICE,
Pueblo, Colorado, May 8th, 1873.

We hereby certify that the attached scrip No. 4, State of Florida, was on this day received at this office, from Samuel A. Long, of Bent County, Territory of Colorado.

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

I, Samuel A. Long, of Bent County, Terr'y of Colorado, hereby apply to locate and do locate the lots 3 & 4 and N. ½ of SW. quarter of section No. 3, in township No. 23 south, of range No. 52 west, in the district of lands subject to sale at the land office at Pueblo, Colorado, containing 185.69 acres, in satisfaction of the attached scrip numbered 4, State of Florida, issued under the act of July 2, 1862.

Witness my hand this 8th day of May, A. D. 1873.

SAMUEL A. LONG.

Attest:
IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

I request the patent to be sent to .

LAND OFFICE,
Pueblo, Colorado, May 8th, 1873.

We hereby certify that the above location is correct, being in accordance with law and instructions.

CHAS. A. COOK, *Receiver.*
IRVING W. STANTON, *Register.*

(Indorsed:) Register's and receiver's No., 526; agricultural college scrip, No. 4. Fla. Located May 8th, 1873, by Samuel A. Long, at Pueblo, Colorado. Sect. 3, town. 23 S., range 52 W. D. S. No. 1760. Filed May 8, 1873. Settled Ap'l 3, 1868. Unoffered. No conflicts. Area, 185.69. Correct. Lots 3 & 4, must be described as south of Ark. River. See plat. Within claim Vigil & St. Vrain. D. K., July 24, '73. Approved Oct. 3d, 1873. Brown. Describe lots in patent as south of the Arkansas River. W. W. Curtis, C. C.

Send patent to Hon. J. B. Chaffee, who filed d.p. per. K. 54296. D. K., ex. June 20, '73. C. B. S. Entered on L. R. 33; o. No. 25. Pat. Oct. 4, 1873. Rec. vol. 135, page 387.
(Stamped:) Transmitted Oct. 16, 1873.

246 I, Orrin R. Peasley, and Philip Quinlan, of Bent County, Colorado, do solemnly swear that Samuel A. Long is a citizen of the United States over the age of twenty-one years and is an inhabitant of the lots 3 and 4 and N. ½ of SW. quarter of section No. 3, of township No. 23 south, of range No. 52 west, and that no other person resided upon the said land entitled to the right of pre-emption; that the said Samuel A. Long entered upon and made a settlement in person on the said land since the 4th day of September, 1841, to wit, on or about the third day of *of* April, 1868; he has built a comfortable frame dwelling-house on said land, 20 by 26 feet, with three doors and four windows, board floors and shingle roof, and has lived in the said house, and made it his exclusive home, from the 15th day of May, 1868, till the present time; that he did not remove from his own land, within the Territory of Colorado, to make the settlement above referred to; and that he has, since said settlement, plowed, fenced, and cultivated about 2½ acres of said land. He has also built two log houses for employees, each 14 by 16 feet; also a corral, a stable, a spring-house, and has made over 150 rods of fence. The land is used almost exclusively for stock and grazing purposes.

ORRIN R. PEASLEY.
PHILIP QUINLAN.

I, Irving W. Stanton, register, do hereby certify that the above affidavit was taken and subscribed before me this 8th day of May, A. D. 1873.

IRVING W. STANTON, *Register.*

We certify that Orvin R. Peasley and Philip Quinlan, whose name' are subscribed to the foregoing affidavit, are persons of respectability.

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

A true copy.
(Signed) EDWARD F. BISHOP, *Clerk.*

(Endorsed:) Certificate No. 526. Proof of right of pre-emption. Sec. 3, T. 23 S., R. 52 W. Pre-emption act, 4th September, 1841. Allowed this 8th day of May, 1873. Irving W. Stanton, register. Chas. A. Cook, receiver.

247 I, Samuel A. Long, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the public lands and to grant pre-emption rights," approved September 4, 1841, to the lots 3 & 4 & N. ½ SW. quarter of section number 3, of township number 23 south, of range number 52 west, subject to sale at the land office at Pueblo, Colorado Territory, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of any land in any State or Territory of the United States; nor have I settled upon and im-

proved said land to sell the same on speculation, but in good faith to appropriate it to my exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or person, whatsoever, by which the title which I may acquire from the Government of the United States would inure in whole or in part to the benefit of any person except myself.

SAMUEL A. LONG.

I, Irving W. Stanton, register of the land office, Pueblo, Colorado Territory, do hereby certify that the above affidavit was taken and subscribed before me this 8th day of May, A. D. 1873.

IRVING W. STANTON, *Register.*

248 Land scrip No. 4. For "one quarter section." Genuine. D. McC. Colleges for agriculture and mechanic arts. Act of Congress July 2, 1862. For State of Florida.

Whereas, in pursuance of the act of Congress approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and mechanic arts," the State of Florida has accepted the grant provided by the said act, and under the same has consequently a legal claim to ninety thousand acres not locatable by the State itself, but liable to transfer, and may be located by the assignees of said State according to assignment, attested by two witnesses in the form on the back of this instrument, the locations by assignees in satisfaction of the claim above-mentioned to be made by virtue of a regular series of scrip, a part of which is this land scrip No. 4, for one quarter section:

Therefore be it known that this scrip when duly assigned and attested
249 by two witnesses, under such authority of the said State as the act of the legislature thereof may designate, may be surrendered at any land office of the United States in satisfaction of a location of "one quarter of a section" or for any quantity in one legal subdivision less than one quarter section, where such location is taken in full for one-quarter section, the location to be restricted to vacant public lands subject to entry at private sale at $1.25 per acre, mineral lands excluded; and whilst the aggregate location of all the claims under the said act may be taken in any of the Territories without limitation as to the quantity located in any one of them, yet in virtue of express limitation in the statute "not more than one million acres" of the total aggregate scrip issue under said act can be located within the limits "of any one of the States."

Given under my hand and seal of the Department of the Interior on the twenty-third day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

[SEAL.] B. J. CARMON, (?)
Acting Sec'y of the Interior.

(On left margin:) W. K. Mendenhall.

250 Recorded, vol. 204, page 229.

WILLIS DRUMMOND,
Commissioner of the General Land Office.

(Endorsed on back as follows:)

STATE OF FLORIDA, CITY TALLAHASSEE,
March 27th, 1873.

In virtue of the act of the legislature of the State of Florida, chapter 1166, session laws of Florida, approved February 18th, 1870, and amended 1872, a copy of which has been filed in the General Land Office at Washington, D. C.:

I, William D. Bloxham, vice-president of the Florida Agricultural College, for value received, do hereby assign and transfer to Samuel A. Long, of Bent County, Territory of Colorado, this scrip No. 4, and authorize the said assignee to locate the same upon the terms and conditions specified in said scrip.

Given under my hand and seal this 27th day of March, A. D. 1873.

[SEAL.] W. D. BLOXHAM,
Vice-President of the Florida Agricultural College.

251 Attest:
G. F. LEWIS.
WM. E. LEWIS.

(Stamped:) General Land Office, located and patented.

A true copy:
(Signed) EDWARD F. BISHOP, *Clerk.*

252 U. S. circuit court. Before Judge Hallett, Denver, Aug. 4, 1877.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DAVID H. MOFFAT, JR., RESPONDENT.

Col. L. PAYTON sworn for the complainant.

Ques. Give your full name.

Ans. Lucius Payton.

Q. Where do you reside?

A. At Lynchburg, Virginia.

Q. What is your occupation?

A. I am special agent of the Department of Justice.

Q. Examine the papers now handed you and state what they are, with reference to what files or records of what Department they are composed.

A. I got these papers from the files of the Land Office in Washington City, of the Interior Department.

Q. Are you the custodian of these papers at this time?

A. I am, sir.

253 Q. Do they constitute a part of the original files of the records of the Interior Department?

A. They do.

(Plaintiff's counsel offer said papers in evidence.)

DEFENDANT'S COUNSEL. What are they—what are they called?

PLAINTIFF'S COUNSEL. There is agricultural college scrip of Florida; papers of pre-emption of land down on the Arkansas River; certificate of location; non-mineral affidavit. That is all of them, sir.

Q. Are there like papers in all these cases?

A. Yes, sir.

Q. All the same papers in each case?

A. Yes, sir.

Q. You have examined them all, have you?

A. Yes, sir.

(Plaintiff's counsel here offers in evidence the following records and files from the Interior Department of the United States, namely: Nineteen sets of pre-emption papers, each set consisting of one piece of agricultural college scrip of the State of Florida, and one proof of pre-emption right consisting of the affidavit of two witnesses and the affidavit of the
254 alleged claimant or pre-emptor; the certificate of the location of the agricultural college scrip by the register and receiver of the Pueblo land office; a non-mineral affidavit; and the certificate of the register alone of the location of the scrip on the land. These are each in the nineteen pre-emption cases, being the papers applying to the land described in sets numbered 9, 10, 11, 12, 13, 16, 18, 19, 20, 21, 24, 25, 26, 27, 29, 30, 32, 33, & 35, which are consolidated with case number nine upon the grand docket of this court.

(Defendant's counsel objects to the introduction of this testimony on the ground of irrelevancy.

Obj. overruled, & def't excepts.)

Q. Examine the eight sets of papers now handed you, and state what they are.

A. These are certificates and papers from the Interior Department.

Q. Are they records and original files of the Interior Department of the United States?

A. Yes, sir.

Q. Do they consist of similar papers of the proof of the right of
255 pre-emption and location of agricultural college scrip that have just been shown you and introduced in evidence?

A. Yes, sir.

(Plaintiff offers in evidence these eight cases, which are consolidated with case number fourteen, as a part of the chain of evidence to prove the forgery—as a part of the same general transaction to show the confederacy charged in the bill. They are the location of the agricultural college scrip in cases numbered 524, 538, 526, 529, 528, 533, 537, 548, located in the names of Henry H. Perry, Charles F. Walling, Slicer B. Evans, Orton Spencer, Kaleb Wilson, Sam'l A. Long, Amos K. Howe, and Philip Quinlan.

Defendant's counsel objects on the ground of irrelevancy, and because there has been no proper foundation laid for their introduction.

The court overrules the objection and allows the papers to go in, if they are followed up with the proper proof of forgery.

To which ruling of the court in overruling said objections the
256 defendant, by his counsel, then and there excepted.)

PLAINTIFF'S COUNSEL. The numbers of the locations of the register's and receiver's certificates, and the names of the parties in whose names the locations were made of the first 19 cases or sets of papers heretofore introduced are as follows, namely: number 545, Eli Turner; 550, George Taylor; 558, Henry D. Sampson; 557, Jacob Linden; 531, Arthur Ma-

claim; 553, Phelps Johnson; 549, James Rogers; 540, Sam'l R. Bruce; 554, Richard Seymour; 547, James C. Hall; 551, Charles M. Clark; 525, Michael Quinlan; 530, Charles R. Day; 556, Stearl S. Sims; 554, Anson Beck; 527, Oran R. Peasley; 560, Samuel Cutler; 546, Simeon D. Porter; 532, James Erwin.

Q. Examine these papers and state, if you know, what they are.

(Papers handed witness.)

A. Pre-emption papers and the proofs.

Q. What records and files do they form a part of, if you know?

A. I got them off the files of the Land Office, at Washington City, which is a portion of the Interior Department.

Q. Are they similar in character to the sets of papers heretofore introduced, of which you stated you were the custodian?

A. Yes, sir.

257 (Plaintiff now offers in evidence three other cases, which are not in either of the suits pending, but under the rule of evidence which we propose to follow up by proof that they are forged by the same parties, viz: register's and receiver's number 552, in the name of Thomas Harris; 539, in the name of Jared Howe; and 559 in the name of Alex'r J. Farman, each containing one piece of agricultural college scrip; one proof of pre-emption, consisting of the affidavit of two witnesses and the affidavit of the claimant; register's and receiver's certificate of location; the register's certificate of the proof and location of the scrip, and a non-mineral affidavit, all purporting to have been made in the name of the parties heretofore given.

To the introduction of which in evidence the defendant obj., but the court overruled the said objections, and the defendant, by his counsel, then and there excepted.)

258 Q. State to the court what experience you have had with regard to the examination of papers and comparison of handwritings, and whether or not you consider yourself competent to give an opinion as an expert upon the comparison of handwritings.

(To which question defendant, by his counsel, objects, for the reason that the same is improper in calling for the witnesses own opinion as to his capacity to judge of handwritings by comparison.)

The COURT. I think that part of the question as to his opinion of his ability may be omitted. He can state what experience he has had in the examination of writings in reference to the comparison of different hands.

Q. Answer the question, then, except that portion of it which refers to your own opinion.

A. I was examining agent of land claims in the Pension Office in Washington City for many years, and necessarily had to examine handwritings; I had a good deal of experience, of course, in that way.

Q. State what other experience you have had.

A. Well, I have been traveling 'round on similar business to this through the different States for a number of years and have been upon the stand frequently to testify in connection with handwriting.

259 Q. State what experience you have had in examining papers and in giving testimony with reference to the comparison of handwritings and signatures.

A. I have done it very frequently, in many instances.

Q. I will now ask you to examine the 19 sets of papers first introduced in evidence, and before described, and state your opinion with reference to whether or not all the 19 sets of papers were written out and the names of the witnesses and the names of the pre-emptor claimants and the writing in the body of the papers were made or written by one and the same individual.

(To which question the defendant objects, on the ground that the opinion called for by the question is not evidence; that no sufficient foundation has been laid for the examination of this witness as an expert; and for the further reason that the testimony is irrelevant and not applicable to any issue joined between this complainant and respondent.

Objections overruled, and defendant, by his counsel, then and there excepts.)

A. I have examined these papers repeatedly and thoroughly, and
260 I believe the signatures are all written by the same man.

Q. What signatures do you refer to as having been written by the same man? State specifically.

A. The signatures to the proofs of pre-emption, the signatures of the register and receiver, and the signatures to the non-mineral affidavit.

Q. In your opinion who filled in the name of the assignee in whose name the scrip was entered or located; that is, who wrote the name of the assignee on the back of said scrip, in which names the pre-emption location was made?

A. I believe it was done by the same person who filled up all these papers and wrote all these signatures.

Q. How carefully and how often have you examined all these 19 sets of papers referred to, in regard to which you are now testifying—the handwriting in the body of the instrument and the signatures?

A. I examined them very thoroughly two years ago here in this town; I don't know how many times; I suppose a dozen times; and I have examined them several times in this case since I have been here.

Q. You may give any particular reasons you have as a foundation of your opinion that these papers, both the bodies of them, except the agricultural scrip and the signatures thereto, were written out and the signatures put to them by the same individual.

261 A. Well, there is a similarity in all these signatures; the different names are written always exactly alike.

Q. State whether or not the names of the pre-emption claimants and assignees of the agricultural college scrip are all the same; that is, that the witnesses in some cases being claimants and in other cases being witnesses.

A. Yes, sir; there is only thirty men altogether; they are witnesses for each other throughout.

Q. I now ask you to examine the 8 cases before referred to as numbers 524, 538, 526, 529, 528, 533, 537, and 548, and state your opinion with reference to whether or not the bodies of these papers, excepting the piece of agricultural college scrip of the State of Florida, and the signatures to the papers were written by one and the same person.

A. Yes, sir; I feel satisfied of it in my own mind.

Q. State if you have examined these papers before; and, if so, how much, and when.

A. I examined them repeatedly two years ago and several times since I have been here now.

Q. State in what handwriting, in your opinion, is the filling in of the names of the locators or supposed locators in the assignment on the back of the agricultural college scrip.

A. I think the same person's who filled up all these papers.

262 Q. State your opinion with reference to whether or not the same party that filled up the eight sets of papers you are now testifying about, filled up the 19 sets of papers that you have just heretofore testified to—whether they were filled up and the signatures put to them by one person.

(To which question defendant objects for the reason that it assumes a fact not proven.

Obj. overruled and exceptions taken.)

A. Yes, sir; I believe they were filled up by the same person.

Q. Examine the three sets of papers now handed you, being numbers 522, 539, and 559 heretofore described, and state your opinion with reference to whether the bodies of these papers and the signatures to them, except the agricultural college scrip, were each made by the same person.

(Same objection as to the former question. Overruled and exception taken.)

A. Yes, sir; I think they were.

Q. State how much and how often you have examined these three sets of papers.

A. I have examined them repeatedly, two years ago and since I have been here this time.

Q. State what your opinion is in regard to these three sets of papers being filled up by the same person as the 19 sets of papers and the 8

263 sets of papers heretofore described, about which you have testified that the same person filled them up.

A. I think they were all filled up by the same person.

Q. And with reference to the signatures what do you say?

A. The signatures were written by the same person, I think.

Q. If you know anything further with reference to the writing of these papers, or by whom they were written or filled out, or with reference to their being written by the same person and signatures added, you may state it.

A. I don't know the person by whom they were written, but am satisfied they were all written by the same person.

Cross-examination:

Q. You say, Col. Payton, you are in the employ of the Department of the Interior?

A. No, sir, not now; I have been.

Q. What is your present employment?

A. Special agent of the Department of Justice.

Q. How long have you been in that employment?

A. About three years; I have been in several other Departments, but in this about 3 years.

Q. How long have you been in other Departments?

A. My recollection is I was pension officer 8 years.

Q. What is your business or profession independent of Government positions?

264 A. I have been holding Government positions most of the time for 25 years.

Q. State what these positions were as near as you can remember.

A. I was in the Pension Office; then I helped to remove the Indians Round Lake, Michigan, out to Fort Leavenworth, and that is about as near as I can recollect, sir. In '60 up to '65 I was not in Government employ. I had an insurance company in Philadelphia in 1864 and '5—accident insurance company.

Q. Have you been engaged a considerable length of time in these particular cases?

A. I have been engaged in similar business for the last three years.

Q. Have you been engaged in this land business?

A. No, sir; I have been examining marshal's accounts through the different States.

Q. When was it you made a special examination of these cases two years go?

A. It was in this case I made the examination. I won't be certain about the time, but I think it was two years ago. I came out to assist Mr. Jacobson.

Q. Were you not actively engaged in the preparation and prosecution of these cases at that time?

A. Yes, sir.

265 Q. Are you not now actively engaged in the preparation and prosecution of these cases?

A. Yes, sir.

Q. Do you not take it upon you to endeavor to obtain such testimony as in your judgment the cases seem to require?

A. Yes, sir.

Q. Have you examined these papers in connection with certain persons it has been proposed to put on the stand in this case, with a view of eliciting their opinion in regard to this handwriting?

A. One of them; I don't recollect but one.

Q. Have you not sought to convince that person by arguments and expressions of your own ideas that he could testify it was one and the same handwriting?

A. No, sir, I think not.

Q. You told him what you desired to prove?

A. Yes, sir.

Q. Have you not traveled extensively around this Territory for the purpose of getting evidence in this case?

A. Not in this Territory; I have traveled extensively in connection with the cases.

Q. I wish you would state a little more particularly what renders you, in your opinion, an expert in the comparison of handwritings.

A. I have stated about all I can state. It was my business to

266 examine handwritings in the Pension Office.

Q. In what way did it become your business?

A. I had to examine the claims for bounty land and the different signatures to them.

Q. But then in great part it was nothing more than the examination of such documents as happened to come to that bureau, was it?

A. Yes; I had to compare signatures in one case with signatures in other cases.

Q. Was it in discharge of your duties to make these comparisons?

A. Yes, sir.

Q. In what way?

A. Sometimes the men in the same company would make claims for bounty land and would be witnesses for each other, the same as these parties have.

Q. Are you at all familiar with the proceedings usually had in the Land Office in reference to the pre-emption and entering of lands?

A. No, sir, I am not.

Q. Are you not aware of this fact, at all events: that it very frequently happens that pre-emptors are witnesses for each other when pre-empting land contiguous or land in the same neighborhood?

A. I have had very little to do with land cases.

267 EUGENE K. STIMSON sworn for complainant.

Q. Where do you reside?

A. Pueblo.

Q. How long have you lived there?

A. About six years.

Q. What is your occupation?

A. Civil engineer.

Q. Were you ever employed in the land office at Pueblo?

A. No, sir.

Q. Were you acquainted with one Charles Williams, the clerk in the land office there?

A. I was well acquainted with him.

Q. How long did you know him?

A. I have known him for five years.

Q. When did you know him?

A. I knew him when he was residing in Pueblo.

Q. When was that?

A. That was in 1874.

Q. Was he there in the year 1873?

A. Yes, sir; I think he was.

Q. Did you ever see him write?

A. I have seen him write frequently.

Q. Did you see him write frequently enough to know his handwriting?

A. Yes, sir; I think I could recognize his handwriting.

Q. Have you had any such experience as enables you to testify
268 as an expert in regard to comparisons of handwritings?

A. I have not.

Q. Examine the sets of papers now handed you, being the 19 sets first introduced in evidence in this case, and state your opinion with reference to whether or not Charles Williams wrote the bodies of these papers (papers handed witness).

(Defendant obj. No foundation laid here for a mere opinion. Overruled and exception taken.)

Q. Examine the papers in set number 550, and state whether or not the bodies of the papers shown you, except the agricultural college scrip are in the handwriting of Charles Williams.

A. I should recognize that as being his handwriting. Set No. 558 also; set No. 557 also; also set No. 531; also set No. 553; also set No. 549; also set No. 540; also set No. 554; also set No. 547; also set No. 551; also set No. 525; also set No. 530; also set No. 556; also set No. 554; also set No. 527; also set No. 560; also set No. 546; also set No. 532, being the first 19 sets first introduced in evidence.

(Defendant objects to this testimony, and all of like character, on the ground of irrelevance. Overruled and exception taken.)

269 Q. Examine the 8 sets of pre-emption papers heretofore introduced in evidence in this case, and state whether or not, in your opinion, the bodies of these sets of papers, except the agricultural college scrip, were written or filled up by Charles Williams (papers shown witness).

A. It is my opinion that he wrote the papers in set No. 524; also in set No. 538; also in set No. 526; also in set No. 529; also in set No. 528; also in set No. 537; also in set No. 548; also in set No. 533.

Q. I now ask you to examine the papers in the three sets of pre-emption files heretofore introduced in evidence in this case, and state whether or not, in your opinion, Charles Williams wrote the bodies of these papers, excepting the agricultural college scrip.

A. In my opinion Charles Williams filled in the bodies of the papers, except the agricultural college scrip in set No. 522; also in set No. 539; also in set No. 559.

Q. State, if you know, what employment or position Charles Williams occupied during the year 1873.

A. He was clerk in the United States land office for Mr. Cook and Mr. Stanton, register and receiver at Pueblo of the Arkansas Valley land district.

Cross-examination:

Q. Capt. Stimson, during the period of time to which you
270 have referred, had you frequently seen Mr. Williams in the land office at Pueblo?

A. Yes, sir.

Q. State, if you know, whether it was not his duty, or if he did not, independent and outside of these papers that have been shown to you, very frequently to your knowledge fill up the body of declaratory statements and other papers relating to the pre-emption of land for the purpose of having the pre-emptors and witnesses sign the same.

A. I don't know that I can answer that; I don't know that I ever saw him fill up papers. I have seen him writing in the land office frequently.

Q. Then you have, of course, seen him in the land office filling up blanks?

A. I suppose they were. They were printed forms of some sort or kind.

Q. Can you not also say there were witnesses or pre-emptors standing around waiting to sign them?

A. I suppose I have seen him doing that.

Q. What you mean to say, then, is that your attention was not particularly called to the transaction which might be going on at the time; but have you not seen him frequently at his desk or at the counter writing out documents?

A. Yes, sir; I have.

271 Q. Have you not, also, seen people standing 'round as though they were about to sign a document or take an oath?

A. Yes, sir.

Q. Often?

A. Yes, sir.

Q. Was it a frequent occurrence?

A. Yes, sir.

Q. In the land office at Pueblo?

A. Yes, sir.

Q. He was then, you think, a clerk in the land office?

A. Yes, sir.

Q. For aught that you know these particular papers which you have examined and the blanks, the bodies of which were filled out in the handwriting of Mr. Williams, might have been filled out in the mode and manner indicated?

A. They might.

Q. Then you know nothing about it beyond this fact, that the body of the instruments, so far as they are written out, are, in your opinion, in the handwriting of Mr. Williams?

A. Yes, sir; that is all.

FERD. BARNDOLLAR sworn for the complainant.

Q. Where do you reside?

A. Pueblo.

Q. What is your official position or occupation?

272 A. Register of the United States land office.

Q. Have you in your possession any of the original files or records of that office now?

A. Yes, sir.

Q. Will you produce them and state what they are?

A. They are declaratory statements; I think there is 19 pre-emption filings; they are numbered, 1843, in the name of Eli Turner; 1861, Charles (George) Taylor; 1913, Amos Sampson; 1812, Jacob Linden; 1767, Arthur Maclain; 1882, Phelps Johnson; 1880, James Rogers; 1825, Sam'l R. Bruce; 1841, James C. Hall; 626, Charles N. Clark; 1759, Michael Quinlan; 1766, Charles R. Day; 1911, Stearl S. Sims; 1842, Anson Beck; 1761, Oran Peasley; 1844, Simpson D. Porter; 1768, James Erwin; 1758, Philip Quinlan; 1823, Amos K. Howe; 1760, Samuel A. Long; 1765, Wilson; 1764, Orton Spencer; 1769, Slicer B. Evans; 1822, Charles F. Walling; 1859, Henry H. Perry.

Q. State whether or not these papers called declaratory statements which you have just described constitute a part of the records and files of the land office of Pueblo, of which you are the register.

A. They do.

Q. Are they the originals?

A. Yes, sir.

(Plaintiff offers the above papers in evidence. Defendant objects
273 on the ground of irrelevancy; objections overruled and exceptions taken.)

HENRY K. PICKNEY sworn for the complainant.

Q. Do you know Charles Williams?
A. Yes, sir.
Q. Did you know him in the year 1873?
A. No, sir.
Q. When did you know him?
A. I knew him first the first of June, 1874, and relieved him in December of the same year. I took his position at the land office.
Q. Did he, before that time, occupy the position as clerk in the land office?
A. Yes, sir.
Q. Did he occupy that position in the land office in the year 1873?
A. I think he did.
(Admitted.)
Q. Have you ever seen him write?
A. Yes, sir; I have seen him write a great deal.
Q. Do you know his handwriting?
A. Yes, sir.
Q. What position do you now occupy?
A. Clerk in the land office at Pueblo.
Q. Examine the declaratory statements now shown you and which have been introduced in evidence in this case, and state whether they
274 are in the handwriting of Charles Williams, the bodies of them.

A. Declaratory statement number 1843 is, in my opinion, in the handwriting of Charles Williams; also No. 1861, also No. 1913, also 1912, also 1767, also 1882, also 1860, also 1825, also 1845; No. 626 is not in his handwriting; No. 1759 is in his handwriting, also 1766, also 1911, also 1842, also 1761, also 1844, also 1768, also 1769; 1758 I think is in Williams' handwriting, but not in his general handwriting; also not 1823; 1760 is in Williams' handwriting; 1765 also; also 1764; No. 1822 I think is not in Williams' handwriting; No. 1859 is in Williams' handwriting.

Q. I now ask you to examine the 19 sets of pre-emption papers first put in evidence in this case before the court and described, and state whether or not in your opinion the bodies of the papers composing these sets, except the agricultural college scrip, is written or filled in by Charles Williams.

A. Set No. 545 is in Williams' handwriting; also 550, also 558, also 557, also 531, also 553, also 549, also 540, also 554, also 547, also 530, also 551, also 525, also 556, also 544, also 527, also 560, also 176, also 532.

275 Q. I now ask you to examine the 8 sets of pre-emption papers heretofore introduced in evidence in this case and described, and to state whether or not the bodies of the papers constituting these sets, except the agricultural college scrip, is made or written by Charles Williams.

A. Number 528 is in the handwriting of Charles Williams; also 538, also 526, also 529, also 528, also 533, also 537, also 548.

Q. I now ask you to examine the three sets of pre-emption papers heretofore introduced in evidence, and state whether or not the bodies of the papers composing the files, except the agricultural college scrip, is in the handwriting of Charles Williams.

A. Number 522 is in the handwriting of Charles Williams; also 539, also 559.

Q. Is that all you know about that transaction?

A. Yes, sir.

Q. You were not in the office at Pueblo during the year 1873?

A. No, sir.

Q. Do you know anything with reference to Mr. Williams having been an accomplished penman in the way of imitating handwriting?

A. I do not.

Cross-examination:

276 Q. In reference to these declaratory statements which you have testified were not in the handwriting of Mr. Williams, I will ask you if you mean by that to intimate that it was the simulated handwriting of Mr. Williams or that you didn't know whose handwriting it was?

A. I mean to say that one looked like his handwriting disguised.

Q. Please mark that one.

A. I don't think it is his handwriting, though some parts of it look like it; I cannot testify that it was or was not.

Q. You mean to say, then, that as to any of these certificates that are not in the ordinary handwriting of Mr. Williams you have no knowledge?

A. No, sir; none at all.

Q. Have you any opinion to express?

A. No, sir.

L. PAYTON recalled for complainant.

Q. Examine the declaratory statements of pre-emption filings Nos. 1913, 1843, 1861, 1912, 1767, 1882, 1860, 1825, 1845, 626, 1766, 1911, 1842, 1761, 1759, 1844, and 1768, and state with reference to whether or not in your opinion the same person who wrote or filled in the bodies of these declaratory statements also wrote or put the signatures to them.

277 (Defendant's counsel objects to this question; same objection made when Col. Payton first testified. Obj. overruled and exceptions taken.)

A. I believe they are all written by the same person; I have examined them.

Q. How often and how much have you examined these declaratory statements which you now testify that both the bodies and the signatures are in the same handwriting?

A. I have examined them two or three times since they have been here, and I examined a portion of them in the land office at Pueblo.

Q. I now ask you to examine declaratory statements and pre-emption filings Nos. 1769, 1760, 1765, 1764, and 1859, and state whether or not, in your opinion, the bodies of the last-named declaratory statements and the signatures to them were written by one and the same person.

A. I think so.

Q. I now ask you to examine declaratory statements or pre-emption filings No's. 1823, 1758, and 1822, and state whether or not in your opinion the bodies of these three declaratory statements and the signatures to them were written by the same person who wrote the others that you heretofore examined and testified to.

A. Yes, sir.

278 Q. State whether or not in your opinion the bodies and signatures in the last three you have testified to are written in a forced or simulated hand and not in the common hand of the party writing it.

A. Yes, sir; they are written in a disguised hand.

Q. I will ask you whether or not all the papers that you have examined and testified about in this case and the signatures to them are written by one and the same person.

A. Yes, sir; it is my opinion.

Q. I will ask you whether or not, in your opinion, the signatures to all the pre-emption papers that you have examined and testified regarding to this morning are written not in the natural hand of the person whose signatures they purport to be, but in the disguised hand or simulated hand of some other person.

A. I feel satisfied that they are all written in a disguised hand, although the signatures on these three declaratory statements are not so much disguised but that I think any good judge of writing could tell them.

Q. Examine the papers I now hand you and state what they are, and what office they came from, and what files or records any part

279 of them are; what is the paper you now hold?

A. This is what they call in the office a "jacket," letter "P, 54269." I believe from the marks it is an office paper from the Interior Department.

(Plaintiff now offers in evidence what is termed a "jacket," marked with a letter K, No. 54296, being a certified copy of the said jacket from the Interior Department.

Obj. to. Obj's sustained, and plaintiffs except.)

Cross-examination:

Q. Col. Payton, I understand your testimony on being recalled, as well as your former testimony, to the effect that certain writings exhibited to you were written by one and the same person, is a mere matter of opinion, and is not based upon any knowledge of your own as to who made these writings, nor yet upon any knowledge of your own as to the actual and real handwriting of such person.

A. No, sir; I do not know his handwriting, and do not know the man.

Q. It is, then, merely a matter of opinion with you?

A. Well, I am satisfied in my own mind.

Q. But is it not, after all, an opinion?

A. Yes, sir; it's my opinion.

280 THOMAS O'BRIEN sworn for complainant.

Q. Where do you reside?

A. In Denver.

Q. What is your occupation?

A. Clerk?

Q. What has been your occupation for years past?

A. It has been that of clerk since 1851.

Q. State what your experience has been with regard to the examination of handwritings and signatures and comparison of handwritings and signatures since 1851.

A. I was nine years a clerk in Washington, in the Patent Office and Pension Office. Eight years after that I was engaged in the prosecution of claims against the Government, in the preparation of papers for signature in the Pension Office, and in the business of making land warrants; in the Patent Office recording specifications of inventions five years. My experience is based upon seventeen years of that kind of occupation.

Q. Have you ever testified, as an expert, upon the subject of comparison of handwritings? If so, state how much experience you have had in that regard.

A. I have never testified as an expert.

Q. State how much you have examined papers and signatures with
281 view of determining whether signatures and papers were written in the same handwriting of an individual or in disguised or simulated hands.

A. My attention has been drawn to that about 7 years in particular.

Q. You have given the subject much attention and examination.

A. Yes, sir.

Q. Examine the papers I now hand you, being the thirty sets of pre-emption papers which were introduced in evidence in this case before the court, and state whether or not you recognize these as papers that you have before examined.

A. I have examined them frequently.

Q. State whether you have examined them with a view of determining as an expert whether the handwriting in the bodies of the instruments or all the bodies and all the signatures were written by the same person.

A. That is my judgment.

Q. You may state fully what your opinion is upon the subject of whether or not the bodies of these instruments and the purported signatures of the pre-emptors and witnesses are in the same handwriting and written by the same person.

282 (Defendant's counsel objects to the foregoing question for the reason that the testimony is irrelevant; and secondly, for the reason that expert testimony is not admissable in this case; and 3rd, for the reason that no sufficient foundation has been made by this witness that he is competent to judge as an expert in regard to the handwriting concerning which he is interrogated.

Objections are overruled, and defendant, by his counsel, then and there excepts.)

A. I have no doubt of it whatever.

Q. State fully your reasons for that opinion.

A. I give that opinion by reason of all the knowledge that I can possess by comparison of handwritings. In order that my answer may be fully understood I wish it to go to this extent, that the same party that filled up the body of these papers not only signed the witnesses' names to them, but also the register's and receiver's names.

Q. State whether or not, in your opinion, the signatures to these papers of the claimants and the witnesses and the register's and receiver's
283 signatures are in a disguised or simulated handwriting.

A. There is no question in my mind about its being disguised handwriting.

Q. State whether or not the writing in the larger part, in the bodies of these instruments or papers, are in the natural handwriting of the person making them.

A. I think so.

Q. State whether or not you have compared the handwriting of the signatures to all these papers, and whether or not the forced or simulated handwriting consists of from three to six different characters, and that the signatures of the witnesses and the claimants are written in from three to six simulated hands when compared.

A. Yes, sir; that is my judgment.

Q. State whether or not, in your opinion, the signatures mentioned were written in from three to five different kinds of ink, and with different pens which may have been used at the time they were made.

A. I cannot state they were written with different pens; as to more than two kinds of ink, I do not think there was more than two kinds used.

284 Q. State whether or not, from your examination of the thirty sets of papers your attention is now particularly called to, there are more than thirty names, which thirty names constitute the ninety signatures in the thirty sets of papers.

A. That is the number they cross-swear for each other.

Q. What do you say with reference to whether or not the signatures purporting to be the signatures of the register and receiver were also written by the same party who wrote the body of the instruments?

A. I give it as my judgment that my answer should go to that extent, that I believe that the same party that wrote the body and made the signatures of the claimants and witnesses also made the signature of the register and receiver.

Q. Does your testimony given in this case apply to the whole thirty sets of pre-emption papers which you have heretofore examined?

A. It does.

Q. Examine the declaratory statements or pre-emption filings heretofore introduced in evidence in this case, numbered 1842, 1764, 1761, 1911, 1766, 1845, 1825, 1860, 1882, 1767, 1912, 1861, 1843, 1913, 1759, 1769, 1760, 1765, 1859, 1768, and 1844, and state whether or not in your opinion the bodies or filling in of these declaratory statements and the purported signatures thereto were written by one and the same person.

A. I think so.

285 Q. Examine number 626 and state what your opinion is with reference to the body of the instrument and the signature being the same.

A. They are the same.

Q. Examine numbers 1822, 1758, and 1823 and state whether or not in your opinion the same person who wrote the body of the declaratory statement put the signatures to them.

A. Yes, sir.

Q. State whether or not in your opinion the bodies of these instruments last shown you are in a simulated or disguised hand.

A. In a disguised hand.

Q. Are the three papers last shown you in your opinion written by the same person who wrote all the others?

A. Yes, sir.

Cross-examination:

Q. I under-stand that your testimony in regard to the handwriting concerning which you have testified is an opinion based upon your experience as a penman and from the examination heretofore of writings, and that it is not based at all upon any personal knowledge you have relating to this handwriting?

A. I do not know the party who did it.

Q. And you have no knowledge of his handwriting?

286 A. No, sir.

Q. It is merely a matter of opinion?

A. Yes, sir.

JOAB O. BOSWORTH sworn for complainant.

Q. Give your full name.

A. Joab O. Bosworth.

Q. What is your occupation, and where do you reside?

A. I reside in Denver; occupation, druggist.

Q. Do you know one Charles Williams?

A. I do.

Q. When did you know him?

A. I first became acquainted with him in June, '74.

Q. In what capacity was he then acting?

A. As clerk in the land office at Pueblo.

Q. What was your occupation at that time?

A. I was also a clerk there at that time.

Q. At the same time Charles Williams was?

A. Yes, sir; for about two months.

Q. How frequently have you seen him write?

A. Almost every day for the two months that I was there, and some afterwards.

Q. Do you know his handwriting?

A. Yes, sir.

287 Q. Have you examined the thirty sets of pre-emption papers which have heretofore been introduced in evidence in this case, which I now show you, with a view of forming an opinion whether Charles Williams wrote the filling in in the bodies of these papers, except the agricultural college scrip?

A. Yes, sir.

Q. Are they or not, in your opinion, in his handwriting?

A. Yes, sir, they are.

Q. What has been your occupation during the last five or ten years with reference to clerical duties, and your experience in judging of handwriting?

(Defendant objects, excepting so far as it relates to what his occupation has been. Overruled, and exceptions taken.)

A. During the years 1870, 1871, and most of 1872, I was book-keeper and clerk in a dry-goods store, and from the first of January, 1873, to the first of January, 1874, I was both book-keeper and teller in the Bank of Denver, and then I had no regular employment until the first of June, when I went in as clerk for the receiver at Pueblo and stayed with him

until the first of September—through June, July, and August—and then went into the drug business in Denver, at which I have been ever since.

288 Q. Have you examined these 30 sets of pre-emption papers that have been referred to with a view of forming an opinion as to whether the same person—Charles Williams, as you testify—who wrote the bodies of the papers also wrote the signatures?

A. I have examined them; yes, sir.

Q. I will ask you to state your opinion as to whether or not the signatures to the proofs of pre-emption—the name of the witnesses and the claimants in the proof of pre-emption—were written by Charles Williams or by the same party who wrote the bodies of the instruments.

(Defendant's counsel objects.)

Cross-examination by defendant's counsel upon his qualification to testify as an expert:

Q. (By def't's counsel.) I will ask you if, from the experience which you have had in mere clerical duties, you regard yourself as an expert in the matter of handwriting? In judging of the similitude of handwriting; in judging as to the genuineness or as to who wrote certain documents which may be presented to you, by comparison?

A. I cannot say that I am; my experience almost entirely in that matter is the year I was in the bank; that is the practical part of it, and then I simply had to distinguish signatures to checks.

Q. Had you, during the time you testify to, any occasion whatever to examine by comparison the handwriting of different documents pre-

289 sented to you and to judge as to whether the one was genuine or not, or both were forgeries; or whatever the case might be?

A. I don't remember of any more than ordinary checks.

Q. What you mean to say is that if a check was presented to you while you were in the bank you, of course, formed your own judgment as to whether it was genuine or not?

A. Yes, sir; by comparison with his signature in the book.

Q. But beyond that had you any occasion to examine any other documents and to judge and state whether the one or the other was genuine or not?

A. No, sir; I don't know that I had.

Q. Then, if I understand you, during the time that you have spoken of in your direct examination you simply judged of handwritings as presented to you as an ordinary clerk would?

A. Yes; and as a cashier and payer of checks.

Q. But you never at any time made it your special business or object to compare different handwritings of different instruments, and say whether the one or the other was genuine or was not?

A. No, sir; with the exception, perhaps, in the capacity of juryman.

290 Q. How often have you been a juryman during this time?

A. Twice; but in only one case of forgery, though.

Q. From all the experience you have had state whether or not you regard yourself as expert in this matter of comparison of writings.

A. I do not.

(Plaintiff does not offer him upon his opinion as an expert alone, but because he has watch' Williams write, &c.)

Direct examination resumed:

Q. Have you, during the time you were there in the office with Mr. Williams, seen him or watched him disguise his handwriting and imitate signatures?

(Obj. to on the ground of irrelevancy. Obj. overruled and exception taken.)

A. I have, and yet I don't know as I ought to say watched him. A good many times we would not have much to do and we would be writing—scribbling on pieces of paper—and I have seen him write some of the names here.

Q. What names have you seen him write that you find in these papers?

A. Irwin W. Stanton and Charles Cook.

Q. Have you seen him write their names in a disguised hand or in imitation of their signatures so that they looked like these you
291 have seen here?

A. I have.

Q. Have you seen him imitate other signatures?

A. Yes, sir.

(Defendant obj. to that question and answer as not relating to any of the parties in this case, nor yet to Stanton or Cook. Overruled and exception taken.)

Q. I believe you stated you had seen Charles Williams write other signatures than those of Stanton's and Cook's in imitation of signatures he would have before him, and he would imitate it expertly.

A. Yes, sir.

Q. State whether or not, in your opinion, from your knowledge of his handwriting and having seen him write frequently, and from your examination of these papers, it is your opinion that Charles Williams wrote the signatures as well as the bodies of the instruments.

(Def't obj. same as before. Overruled and exception taken.)

A. It is my opinion.

Q. Does your answer to the last question or interrogatory apply to all of the 30 sets of pre-emption papers, excepting the agricultural
292 college scrip included in those which you have examined?

A. Yes, sir. I can't say positively that I have examined every paper. In looking them over I won't say positively that I saw every piece.

Q. I will ask you to examine declaratory statements and pre-emption filings numbered 1758, 1913, 1861, 626, 1842, 1764, 1911, 1761, 1825, 1860, 1882, 1845, 1766, 1843, 1912, 1767, 1759, 1769, 1760, 1765, 1859, 1768, 1844, 1822, and 1823, and state, if you have examined these papers before, as to the handwriting of the bodies and the signatures thereto.

A. Yes, sir.

Q. State, from your examination of these papers and your knowledge of Williams' handwriting, whether or not, in your opinion, he wrote the bodies of the statements and also the signatures.

(Def't obj.: no proper foundation has been laid for the testimony of this witness as an expert in the matter of the handwriting, of which he has no absolute personal knowledge. Overruled and exception taken.)

A. As to the bodies of all the papers, excepting four, I am certain that

Williams wrote it. Here is four declaratory statements that are in
293 a different handwriting from the others, and I can only judge as a matter of opinion. In my opinion, they were written by the same party. And also regarding the signatures it is only my opinion that Williams wrote them.

Q. How long were you in the office as a clerk—in the land office at Pueblo with Williams?

A. I think he was there about two months after I went in.

Cross-examination:

Q. Do I understand you that these exhibitions of skill on the part of Williams were exhibited by him to you when you were otherwise disengaged in official or clerical duties?

A. It was a mere matter of pastime with us—in fact at the time I knew nothing about this case.

Q. Did you at the same time or times also indulge in the same pastime of seeing how nearly you could imitate the signatures of various individuals?

A. I don't remember of it, because I cannot do it; it is out of my line.

Q. Then, I understand, these exhibitions were made as a mere matter of amusement?

A. That is all.

294 Q. As I understand you, if he saw fit to imitate the supposed signatures of Henry Clay or Daniel Webster, or any other man, he would then and there have done it?

A. He did do it of public men. I have seen him imitate that of Treasurer Spinner.

Q. The idea at the time, then, was simply this, that he was showing how nearly he could imitate the handwriting of various persons.

A. Yes, sir; and without any particular purpose that I know of.

PLAINTIFF'S COUNSEL. That is all the testimony we desire to take.

MONDAY AFTERNOON, *Aug.* 6, '77.

CLARENCE CLARK sworn for defendant.

Q. Are you acquainted with Irving W. Stanton?

A. Yes, sir.

Q. How long have you known him?

A. About twelve years.

Q. Are you acquainted with his handwriting?

A. I was at that time.

Q. When and where were you acquainted with his handwriting?

295 A. I could not give you the exact date. He was clerking over at Moffat's store at the time I was there, and I became familiar with his handwriting from seeing it every day.

(The witness is now shown the envelope with the name of Orin R. Peasley on it, together with the papers therein contained.)

Q. Please examine these papers, so far as the signature of Mr. Stanton is concerned; but before that question state your means of information or the extent of your information in regard to the writing of Mr. Stanton.

A. Well, we were in the store together—clerking together—and constantly writing by each other's side.

Q. How long time were you in the store together?

A. Three, four, or five months; I cannot tell exactly.

Q. And you have frequently seen him write?

A. I have, sir, in that time.

Q. Then I will ask you whose signatures these are that are attached to these papers purporting to be those of Stanton's?

(Plaintiff obj. Stanton is within reach of a subpœna, and that the witness has not shown that he has any sufficient competency as a
296, 297 clerk to judge of handwritings by comparison. Overruled and exceptions taken.)

A. This is Irving W. Stanton's signatures.

Q. Take envelope marked 550, having the name of George Taylor on the back, and look at the papers contained in that envelope and state if the signature of Mr. Stanton to these various papers are genuine or not.

A. Yes, sir; I should say that was Stanton's signature.

(Plaintiff objects further to this testimony that it is irrelevant. Overruled and exceptions taken.)

Q. Mr. Clark, state, if you can, whether what you have already testified to in reference to the signature of Stanton is true in reference to all of these papers?

A. I do not think I have examined them all.

(The witness is now shown the nineteen sets of papers heretofore exhibited to the witnesses Payton, O'Brien, and others, and examined them all.)

Q. Examine these papers, Mr. Clark, in reference to the signature of Mr. Stanton (the witness is now shown the eight sets of papers in envelopes heretofore shown to witnesses on the part of the Govern-
298 ment), and state what is your belief in regard to the genuineness of Stanton's signature to all of these papers which you have seen.

A. I believe they are the genuine signatures of Irving W. Stanton.

(Witness now shown three other sets of papers heretofore exhibited to the witnesses Payton, O'Brien, and others.)

Q. Do you find Irving W. Stanton's name attached or signed to these papers that have been shown you?

A. I do; I think they are all his signatures.

Cross-examination:

Q. How much experience have you had in examining handwriting or signatures of others?

A. I don't know as I have had any experience excepting copying signatures and making signatures, &c.

Q. What has been generally your occupation here?

A. At this time I was clerking in the store of and Moffat.

Q. Have you had any experience detecting simulated or disguised hands?

A. None at all.

299 Q. Are you or do you claim to be an expert in detecting a disguised from a real hand?

(Def't obj.; witness has not been examined at all in regard to distinguishing handwriting. Obj. sustained.)

Q. How long since was it since you saw Stanton write?

A. I could not give the exact date. It must have been since I saw him write some twelve years ago. I have received some letters from him, and some communications from him, but his letters to me were generally signed "Irving" (or "Irl.").

Q. So you have not seen him write for twelve years?

A. No, sir.

Q. Is it not often the fact that signatures sometimes change in that time?

A. Yes, sir; but I don't know why his should.

Redirect examination:

Q. This handwriting is the same you knew 12 years ago, is it?

A. About the same, sir.

300 CHAS. A. COOK sworn for defendant.

Q. Have you examined the various land-office papers shown to the witness Clark, and heretofore exhibited to witnesses on the part of the Government?

A. Yes, sir.

Q. To those papers whose names do you find signed as register and receiver?

A. Irving W. Stanton, register, and Chas. A. Cook, receiver.

Q. Are you the Charles A. Cook?

A. I am.

Q. What do you say in reference to that signature?

A. It is my signature.

Q. What acquaintance have you had with the handwriting of Irving W. Stanton, register of that land office?

A. I had been acquainted with him for several years before he went down there, and was in the office with him for three years.

Q. What opportunity had you to become acquainted with his signature?

A. I have seen him writing nearly every day.

Q. You recognize his handwriting in these signatures as it appears in these papers?

A. It is his own signature.

301 L. DOUGAL sworn for defendant.

Q. Where do you reside?

A. In Denver.

Q. How long have you lived in Denver?

A. I came here in 1860, and have been here all the time since that time.

Q. What official position do you now occupy?

A. Register of the land office of the Denver district.

Q. Have you heretofore held a like position in the same office?

A. Yes, sir; I was in the land office in 1869.

Q. Do you know Irving W. Stanton?

A. Yes, sir.

Q. Formerly register of the Pueblo land office?

A. Yes, sir.

Q. How long have you known him?

A. About 10 or 12 years, I guess.

Q. Have you ever seen him write?

A. Yes, sir; frequently.

Q. What have been your opportunities for becoming acquainted with his writing, and his signature especially?

A. Receiving letters from him and seeing him sign his name several times to different documents.

Q. Have you examined the papers which have been shown to the other witnesses in this case?

302 A. I have.

Q. Do you find on those papers the names signed of Stanton, register and Cook, receiver, of the Arkansas Valley land district?

A. I do.

(Plaintiff's obj's overruled and exception taken.)

Q. In reference to the signature of Mr. Stanton's as you see it signed to these papers, state in whose handwriting that name is signed.

(Pl't'f's obj's—immaterial and irrelevant. Obj. overruled and exception taken.)

A. I should think it was the genuine signature of Mr. Stanton.

Cross-examination:

Q. Do you know Mr. Charles Williams?

A. Yes, sir; I have seen him frequently.

Q. Do you know his handwriting?

A. I do not think I could swear to his handwriting only in this, that I have received letters written by him, or rather from the land office at Pueblo which I think were written by him while he was clerk there, but I do not know that I could distinguish his handwriting.

Q. Do you or not know that he was a great expert in the way of imitating signatures or handwriting.

303 (Defendant's obj.—not cross-examination; obj. sustained and exceptions taken by defendant.)

Q. Do you or not know that he could sign Cook's or Stanton's name in such a way that it would be very hard to state whether they wrote it themselves or not?

A. I have seen him sign Stanton's name, or rather I have seen letters which he had signed for Stanton and signed "Wm" under it, and it was a very poor imitation of Stanton's signature. I have letters in my office now signed by Williams in Irving W. Stanton's name.

Q. You say he signed under them, by Williams?

A. Yes, sir.

Q. He was not attempting to imitate any signature then, was he?

A. Some of them were signed by him and not signed by Mr. Stanton, which I presume were sent while Stanton was absent.

Q. He did not profess then to make that signature imitate Stanton's signature, did he?

A. I do not know; it was a very poor imitation if he did.

HYATT HUSSEY sworn for defendant.

Q. Where do you live?

304 A. In Denver.

Q. How long have you resided in Denver?

A. Since December, 1862, with the exception of a year I was away—1874.

Q. What was your occupation during the time of your residence in Denver?

A. I was clerk of a bank, and also cashier.

Q. Are you acquainted with Charles A. Cook?

A. Yes, sir.

Q. Are you acquainted with his signature?

A. Yes, sir.

Q. In what way did you acquire your knowledge of his signature?

A. I have seen him sign his name to checks, notes, and deeds.

Q. Often, or otherwise?

A. Repeatedly, a great many times—could not tell the number.

Q. Have you seen these land office papers which have been shown to the other witnesses here in court?

A. I have, sir.

Q. Do you find the name of Charles A. Cook written to any of these papers?

A. I do.

Q. Have you examined that signature?

A. I have.

305 Q. Well, in whose writing are those signature' of names or name written?

A. I believe the signature of Charles A. Cook is genuine.

E. W. COBB sworn for defendant.

Q. Where do you live?

A. In Denver.

Q. How long have you lived here?

A. About 17 or 18 years.

Q. What is your present occupation?

A. Clerk in the surveyor-general's office.

Q. State generally what your occupation or employments have been heretofore.

A. I have been engaged in business here, in mining, and in that office a number of years.

Q. Have you been in any occupation involving clerical duties?

A. Yes, sir; book-keeping, examining accounts, etc.

Q. Do you know Irving W. Stanton and Charles A. Cook, formerly register and receiver respectively of the Arkansas Valley land office?

A. I do.

Q. Do you know the handwriting of these individuals?

A. I do.

Q. Have you examined the papers shown to the other witnesses here in court, with a view of examining into the genuineness of the signatures

306 of Messrs. Cook and Stanton?

A. I have.

Q. Do you find the names of Stanton or Cook signed to those sets of papers?

A. I have found both of their names signed to them.

Q. In whose handwriting are those signatures?

A. In the handwriting of Mr. Stanton and Mr. Cook.

Cross-examination:

Q. How often have you seen them write?

A. A great many times; Mr. Stanton much more frequently than Mr. Cook.

Q. When and where did you become familiar with their handwriting?

A. As a clerk in the surveyor-general's office I conducted the correspondence; and then I have had frequent occasion to examine papers purporting to bear their signatures.

Q. How often have you seen them write their signatures?

A. Stanton was frequently in the office down at Pueblo, and would write——

Q. But have you seen them often sign their own names to documents?

A. I have had no occasion for that.

Q. You get your judgment, then, from signatures attached to papers purporting to be their signatures?

307 A. Yes, sir.

Q. You can swear to it only from the knowledge you got in the course of correspondence?

A. Yes; and very frequently they would come up into the office with papers, and they would say they had written them.

Q. If their letters were written and signed by a clerk in their office, who was an accomplished penman, you might not know but it was a disguised signature?

A. I do not think that could be. I have had occasion to examine such signatures.

Q. You are an expert, are you, in the judgment regarding disguised or simulated hands or signatures?

A. Somewhat.

Q. Where was it you had experience in that?

A. In business of my own, where I had occasion to judge of drafts drawn upon me, and in business connected with the office—the surveyor-general's office.

Q. But you never saw Cook and Stanton write their own signature, and watched them do it?

A. I have not watched them.

Q. You never saw them write?

A. I never watched them writing.

Redirect examination:

308 Q. Have you seen them write?

A. Yes, sir.

Recross-examination:

Q. You have seen them writing?

A. Most certainly, sir.

Q. How often?

A. A great many times; I have seen them write very often.

(Defendant admits that the patents to the land in controversy were issued by the land office to the pre-emptor claimants mentioned in them.)

Attest:

(Signed) W. P. MILLER, *Reporter.*

309 UNITED STATES OF AMERICA:

Circuit court of the eighth judicial district, sitting within and for the district of Colorado, of the July term thereof, A. D. 1878.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DAVID H. MOFFATT, JR., RESPONDENT.

I, Moses Hallett, district judge of the United States for the district of Colorado, do hereby certify that the foregoing depositions of the witnesses, as well on the part of the complainant as the respondent, in a certain cause (the same being entitled as above), and lately depending in the circuit court of the United States of America for the said district of Colorado, wherein the United States of America was complainant and David H. Moffat, junior, was defendant, was taken and given in open court in the said circuit court, at the July term thereof, A. D. 1878, and on the days mentioned in the foregoing report of the said depositions, which said depositions were taken by one Walter P. Miller, esq'r., a reporter agreed upon and nominated by the respective counsel in said cause or suit, and which said agreement and nomination was by the said court then and there approved, and which said depositions of witnesses were taken by the said reporter under the direction and supervision of the said circuit court in session, and in which court I was then
310 presiding as district judge for the district of Colorado, according to the statutes of the United States of America in such case made and provided; and also that the several interrogatories, and the objections severally made to the respective answers to said interrogatories, and also the objections, and exceptions to the rulings of the said court upon said objections, as the same are set forth and mentioned in the said report of the same by the said Walter P. Miller, esq., reporter as aforesaid, are true and correct; that each of the said witnesses in said report mentioned was duly sworn in said cause, and afterwards examined by the respective counsel for the complainant and the respondent, and also by the court in manner and form as given in the said report, and the said objections, exceptions, and rulings of the court were then and there made and given as set forth in this certificate.

And I also certify that upon the examination of witnesses in said cause in which this certificate is given, certain documentary evidence was exhibited to the witnesses so as aforesaid examined in open court, and also exhibited to the said court; that the said documentary evidence, consisting of a number of papers, were duly marked so as to identify the same, and the witnesses interrogated by the counsel in reference thereto, all of which in said report appears; that the said papers are in said report marked as follows, viz:

311 That the said exhibits were afterwards offered and received in evidence in the trial of said suit, under such objections thereto made as are given in said report.

And be it remembered and certified that at the time of the pendency of the said suit there was also depending and undetermined in said circuit court a certain other suit or cause, wherein the said United States of America was the complainant and the said David H. Moffat, junior, and

Robert E. Carr were the respondents, which said last-named suit was the same in all respects as the said suit herein first named, except that by reason of a certain conveyance by the said David H. Moffat, junior, to the said Robert E. Carr of a portion of the lands in said bill or complaint in said last-mentioned suit mentioned and described, and the legal title to which before the said conveyance to the said Carr appeared to be in the said David H. Moffat, junior, the said Carr became and was a party respondent, impleaded with the said Moffat in the said last-named suit so far as the lands so as aforesaid conveyed to him were concerned; that the counsel for the complainant as well as for the respondent and respondents, respectively, in the said suits were the same in each of the said suits; that by reason of the identity of said suits, except the addition of the name
312 of Robert E. Carr as a respondent with the said David H. Moffat, jr., in the one suit, whereas the said Moffat was the sole respondent in this suit, it was orally and in open court agreed by counsel in said suits respectively that the evidence or testimony taken in the said suit of the said complainant against the said Moffat as sole respondent should stand and by the said court be considered as testimony taken in each of said suits; that the said stipulation extended not only to the oral testimony so as aforesaid taken in open court, but also to the testimony theretofore taken by a special master in chancery, duly appointed for said circuit court, and by the said master duly reported to said court; that the said report appears of record in this court; that after the taking of said testimony in open court the said court proceeded to examine and consider the whole of said testimony, applying the same to each of said suits; that on the day of , A. D. 1879, the said court, after due examination and consideration of said testimony and applying such testimony, rendered a decree in each of said suits in favor of the complainant therein, which decrees appear of record in said court; but the said oral stipulations, as well as the testimony given as aforesaid, and the order of said court in the premises to the effect that the testimony in the one cause should be taken as testimony given in the other of the said causes, do not appear of record in the journal of the proceedings of said
313 court in said causes, or either of them, the said stipulations and the said order having been inadvertently omitted in said records.

I also certify that upon the trial of said causes, and in open court, there were exhibited to the said court, and to the several witnesses in said causes sworn and examined, the various original documents aforesaid pertaining to the pre-emption of the lands in controversy in said suits; that the said original documents were then in the position of one Peyton, special agent of the complainant in said suits; that the said original documents, upon being exhibited as aforesaid, were respectively marked, and the marking thereof is given in the report of the said testimony before mentioned, and as in this certificate hereinbefore more particularly specified; that upon the representation of the said Peyton, esq., and of the counsel for the complainant, that the said original documents were of and a part of the archives of the complainant, and belonging to the Department of the Interior as the custodian thereof, and, further, that the said original documents were alike and identical, except as to the names of the several pre-emptors and the description of the several parcels of lands in said docu-

ments mentioned, and also that it was the duty of the said Peyton,
314 as such special agent of the complainant, to return the said original documents to the particular custody from whence he obtained the same, and that the names of the said pre-emptors and a description of the lands by them alleged to be pre-empted fully appeared in the bills of complaint in said causes, the said court thereupon made an order that the said Peyton be allowed to permanently withdraw the said original documents upon a filing of a certified copy with the clerk of said court of two (2) sets of said original documents, which were then enclosed in two certain envelopes respectively marked , the contents of one of the said envelopes being offered and received in evidence in the case of the complainant against said Moffat, and the contents of the other of the said envelopes being offered and received in evidence in case of the complainant against the said Moffat and the said Carr, which was accordingly done; that the said certified copies of the contents of said envelopes, by the agreement of the respective counsel for the said parties complainant and respondent in the said causes, and in each of them, was to be received and to be considered in evidence by the said court, and in lieu of the originals thereof, allowance being made in the consideration of the said certified copies only for the difference between said copy and the remainder
315 of said originals not so as aforesaid copied, for the difference of names of pre-emptors and witnesses, and the description of lands, the said original documents and the said copy of a portion of the same being in all other respects identical in language and form.

And I further certify that the paper annexed to the foregoing testimony orally given in open court, and marked , is a correct transcript of the said original papers so as aforesaid, by certified copy thereof, *are* left remaining in this court.

And I further certify that the foregoing is all of the testimony offered and given in open court upon the trial of said causes; and also that all of the oral stipulations made by the counsel for the parties respectively to said causes made and entered into in open court upon the trial of said causes are hereinbefore in this certificate set forth.

(Signed) MOSES HALLETT, [SEAL.]
District Judge.

JUNE, 1879.

UNITED STATES OF AMERICA:

Circuit court of the 8th judicial district, sitting within and for the district of Colorado.

UNITED STATES OF AMERICA)
vs.
DAVID H. MOFFAT, JR.)

316 It is hereby mutually agreed and stipulated by and between the parties to the above-entitled suit, through their respective counsel, that the stipulations and orders set forth in the foregoing certificate of the Hon. Moses Hallett, district judge of the district of Colorado, and who presided in court upon the trial of said cause, were made in open court as is in such certificate stated, and that the statements made in such certificates may

be, and hereby are, so far as the argument of counsel can avail, made a part of the record of the above-entitled cause, for the purpose of enabling the Supreme Court of the United States to fully consider all of the evidence offered, given, and made upon the trial of said cause in any appellant proceedings that the respondent in said cause may see fit to take.

(Signed) G. G. SYMES,
Special Counsel for United States, Complainant.

(Signed) L. C. ROCKWELL,
Att'y for D. H. Moffatt.

(Endorsed:) No. 9. Circuit court U. S. U. S. of America vs. D. H. Moffat, jr. Notes of evidence taken before the court. Filed May 27th, A. D. 1878. (S'd) Edward F. Bishop, clerk.

317 And afterwards, and on, to wit, the twelfth day of July, A. D. 1878, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

Decree.

UNITED STATES OF AMERICA } 9. In chancery. To compel surrender
vs. } of land patent.
DAVID H. MOFFAT, JR. }

And now this day come again the parties complainant and defendant hereto, by their respective solicitors, and the several causes, respectively numbered 9, 10, 11, 12, 13, 16, 18, 19, 20, 21, 24, 25, 26, 27, 29, 30, 32, 33, and 35, having by said court at the July term thereof, A. D. 1877, been consolidated into one suit, and the said cause coming on now to be heard upon the pleadings and proofs herein, the court, after argument of counsel and being fully advised in the premises, having carefully considered the same:

It is now ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the patent dated October 4th, A. D. 1873, by which the said United States granted to Eli Turner the following real estate, to wit, the southeast quarter of section eight, in township twenty-three south, of range fifty-two west of the 6th principal meridian, be, and the same is hereby, set aside and declared void, and the deed of conveyance of said real estate by said Eli Turner to Thomas Harris, and the deed of conveyance of Thomas Harris to said David H. Moffat, jr., is also hereby set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said
318 United States granted to George Taylor the following real estate, to wit; the southwest quarter of the northwest quarter of section eight, the south half of the northeast quarter and the southeast quarter of the northwest quarter of section seven, in township twenty-three south, of range fifty-two west of the 6th principal meridian, be, and the same is hereby, set aside and declared void, and the deed of conveyance of said real estate from said George Taylor to Henry H. Perry, and the deed of conveyance of said real estate from said Henry H. Perry to said David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted

to Henry D. Sampson the following real estate, to wit; the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of section eleven, and the west half of the southwest quarter of section twelve, in township twenty-three south, of range fifty-three west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance of said real estate from said Henry D. Sampson to Henry H. Perry, and from Henry H. Perry to the said David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted to Jacob Linden the following real estate, to wit, the south half of the northwest quarter and the east half of the southwest quarter of section twelve, in township twenty-three south, of range fifty-three west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance of said real estate by said Jacob Linden to Henry H. Perry, and from Henry H. Perry to said David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A.
D. 1873, by which the said United States granted to Arthur McLane
319 the following real estate, to wit, the southwest quarter of the southeast quarter, the east half of the southwest quarter, and the southwest quarter of the southwest quarter of section nine, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance of said real estate from said Arthur McLane to Thomas Harris, and by Thomas Harris to David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted to Phelps Johnson the following real estate, to wit, the lots No. two and three, the southeast quarter of the northwest quarter, and the north half of the southwest quarter of section eleven, in township twenty-three south, of range fifty-three west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance of said real estate from said Phelps Johnson to Henry H. Perry, and from Henry H. Perry to David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted to James Rogers the following real estate, to wit, the southwest quarter of section seven, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance of said real estate by said James Rogers to Henry H. Perry, and from said Henry H. Perry to David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D.
1873, by which the said United States granted to Samuel R. Bruce
320 the following real estate, to wit, lot one of section five and fractional northeast quarter of section eight, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance of said real estate made by Samuel R. Bruce to Henry H. Perry, and from Henry H. Perry to said David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted to Richard Seymour the following real estate, to wit, the southwest quarter of the northwest quarter of section seven, in township twenty-three south, of range fifty-two west, the southeast quarter of the

northeast quarter and the east half of the southeast quarter of section twelve, in township twenty-three south, of range fifty-three west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance of said real estate by said Richard Seymour to Henry H. Perry, and by Henry H. Perry to David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted to James C. Hall the following real estate, to wit, the southwest quarter of section eight, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby set aside, and declared void, and the deed of conveyance of said real estate by said James C. Hall to Thomas Harris, and by Thomas Harris to David H. Moffat, jr., be and are set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted to Charles N. Clark the following real estate, to wit, the west half of the northeast quarter and the west half of the southeast quarter of section twelve, in township twenty-three south, of
321 range fifty-three west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance by said Charles N. Clark to Henry H. Perry of said real estate, and by Henry H. Perry to David H. Moffat, jr., be, and are hereby, set aside and declared void; and the patent dated October 4th, A. D. 1873, by which the said United States granted to Michael Quinlan the following real estate, to wit, the southeast quarter of the southeast quarter of section four, the northeast quarter of the northeast quarter and the lot No. one of section nine, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and hereby, set aside and declared void, and the deed of conveyance of said real estate by said Michael Quinlan to Thomas Harris, and by Thomas Harris to David H. Moffat, jr., be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Charles R. Day the following real estate, to wit, the southeast quarter of the northeast quarter and the north half of the southeast quarter and the southeast quarter of the southeast quarter of section 9, in township 23 south, of range fifty-two west of the 6th principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance to said real estate from said Charles R. Day to Henry H. Perry, and the deed of conveyance from the said Henry H. Perry to David H. Moffat, jr., be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Stearl S. Sims the following real estate, to wit, the southeast quarter of the southwest quarter, the south
322 half of the southeast quarter, and the northwest quarter of the southeast quarter of section eleven, in township twenty-three south, of range fifty-three west of 6th principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance to said real estate from Stearl S. Sims to Thomas Harris, and the deed of conveyance from the said Thomas Harris to David H. Moffat, jr., be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Anson Beck the following real estate, to wit, lots three and four of section six, and the north half of the northwest quarter of section 7, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and

declared void, and the deed of conveyance to said real estate from Anson Beck to Thomas Harris, and the deed of conveyance from said Thomas Harris to David H. Moffat, jr., be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Orrin R. Peasly the following real estate, to wit, lots one and two and northeast quarter of southeast quarter of section four, in township twenty-three south, of range fifty-two west of sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance from Orrin R. Peasley to Thomas Harris, and the deed of conveyance from said Thomas Harris to David H. Moffat, jr., be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Sam Cutler the following real estate, to wit, the lot one and north half of northeast quarter and the southwest quarter of the
323 northeast quarter of section eleven, and the lots one and two of section two (2), in township 23 south, of range 53 west of sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance to said real estate from Sam Cutler to Henry H. Perry, and the deed of conveyance from said Henry H. Perry to David H. Moffat, jr., be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Simeon D. Porter the following real estate, to wit, lots one and two of section six, and north half of northeast quarter of section seven, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance to said real estate from Simeon D. Porter to Thomas Harris, and the deed of conveyance from said Thomas Harris to David H. Moffat, jr., be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to James Erwin the following real estate, to wit, lots two and three and northwest quarter of the southwest quarter of section nine, township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and that the deed of conveyance to said real estate from said James Erwin to Thomas Harris, and the deed of conveyance from said Thomas Harris to David H. Moffat, jr., be, and hereby are, set aside and declared void; all of which said lands are within the county of Bent and State of Colorado, and in the district of lands subject to sale at Pueblo, in the Territory (now State) of Colorado.

324 And it is further ordered, adjudged, and decreed that the said defendants pay to the said complainant its costs in this suit to be taxed, and that the said complainant have execution for said costs.

And afterwards, and on, to wit, the 2d day of September, A. D. 1878, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

THE UNITED STATES *vs.* DAVID H. MOFFAT, JR.	9.	In chancery. To compel surrender of land patent.

At this day comes W. S. Decker, esq., district attorney, who prosecutes

the pleas of the United States in this behalf, and the said defendant, by Hugh Butler, esq., his solicitor, also comes.

And thereupon the said defendant prays an appeal herein, which is allowed him.

And it is ordered that the said defendants, within sixty (60) days from this day, file herein a certified copy of the oral testimony herein heretofore had before the court, and his bill of the exceptions reserved by him upon the hearing herein, and said bill to contain the evidence as aforesaid.

And afterwards, and on the 29th day of June, A. D. 1880, came again the said defendant, by L. C. Rockwell, esq., his solicitor, and filed in said court and in said cause his bond in appeal, and the said bond is in words and figures as follows, to wit:

325 *Appeal bond, U. S. court, Colorado.*

THE UNITED STATES OF AMERICA,
District of Colorado:

Know all men by these presents that we, David H. Moffatt, jr., of Denver, Arapahoe County, as principal, and John L. Routt, as surety, are held and firmly bound unto the United States of America in the full and just sum of five hundred (8500) dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 21st day of June, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately, at the July term, A. D. 1878, of the United States circuit court of the United States for the district of Colorado, in a suit pending in said court between the United States of America, as plaintiff, and David H. Moffatt, jr., as defendants, judgment was rendered against the said David H. Moffatt, jr., to cancel and annul a certain letters patent issued by the United States for certain lands situate in Bent County, State of Colorado; and the said David H. Moffatt, jr., having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, & served on Hon. E. L. Johnson, United States district attorney for Colorado, citing and admonishing it to be and appear at a term of the United States Supreme Court, to be held at Washington, D. C., on the 2d Monday of October next:

Now, the condition of the above obligation is such that if the said David H. Moffatt, jr., shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

DAVID H. MOFFAT, JR. [SEAL.]
JOHN L. ROUTT. [SEAL.]
[SEAL.]
[SEAL.]

Approved.

MOSES HALLET, *District Judge.*

JUNE 29, 1880.

326 *Justification.*

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

I, John L. Routt, surety on the within bond, being first duly sworn, depose and say that I am worth in real estate in Colorado the sum below set opposite my name, that is to say, one thousand dollars, over and above all *their* just debts and liabilities and in property subject to levy and sale upon execution.

JOHN L. ROUTT.

Subscribed and sworn to before me, at Denver, this twenty-first day of June, A. D. 1880.

[SEAL.] JOHN C. ANDERSON,
Notary Public in and for Arapahoe County, Colo.

Gen. No. 9. Circuit court of the United States, district of Colorado. David H. Moffatt, jr., plaintiff in error, vs. United States of America, def't in error. Appeal bond. $. Filed in the circuit court U. S. this 29th day of June, A. D. 1880. Edward F. Bishop, clerk, by , deputy clerk.

And afterwards, and on, to wit, the 10th day of July, A. D. 1880, came again the said defendant, by his solicitor aforesaid, and sued out of said court a writ of citation, and the said citation is in words and figures as follows, to wit:

327 *Citation U. S. court.*

THE UNITED STATES OF AMERICA,
District of Colorado:

The United States of America to E. L. Johnson, esq., U. S. district attorney for the district of Colorado, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the next term thereof, to be holden at Washington, D. C., on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein David H. Moffat, jr., is plaintiff in error and the U. S. is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 10th day of July, in the year of our Lord one thousand eight hundred and eighty.

MOSES HALLETT, *Judge.*

328 *Proof of service.*

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

On this 10th day of July, A. D. 1880, I acknowledge the service upon me of a true copy of the within citation, at Denver City, Colorado.

EDWARD L. JOHNSON,
United States Attorney for District of Colorado.

Sworn to and subscribed before me this day of , A. D. 18 .

, *Clerk,*
By , *Deputy Clerk.*

Gen. No. 9. Circuit court of the United States, district of Colorado. David H. Moffatt, jr., plaintiff in error, vs. The United States of America, defendant in error. Citation. Filed in circuit court of the U. S. this 10 day of July, A. D. 1880. Edward F. Bishop, clerk, by , deputy clerk. , attorney for plaintiff in error.

329 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore had in said court, and in a certain cause lately in said court pending, wherein the United States was complainant and David H. Moffat, jr., impleaded with others, was defendant, as fully and completely as the same still remain filed and of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 14 day of July, A. D. 1880.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

Clerk's fees: Preparing transcript of record, 709 folios, 71.25; preparing two maps, @ 3.00, 6.00—877.25, paid by D. H. Moffat, jr.

(Indorsement on cover:) No. 116. David H. Moffat, junior, appellant, vs. The United States. Colorado C. C. U. S. Filed 14th October, 1880.

112-24

RECEIVED
OCT 6 1884
JAMES H. MCKENNEY,
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1884.

DAVID H. MOFFAT, JR., *Appellant.*
vs.
THE UNITED STATES, *Appellee.*

Appeal from the Circuit Court of the United States for the District of Colorado.

Brief and Argument for Appellant.

Statement of Case.

This action was instituted on the third day of June, 1874, by the United States against Irving W. Stanton, Charles A. Cook, Thomas Harris, Eli Turner, Simeon D. Porter, Anson Beck, and David H. Moffat, Jr., in the Third Judicial District in the late Territory of Colorado, to compel the cancellation of a patent issued by it on October 4, 1873, to Eli Turner, for one hundred and sixty acres of land, situate in Bent County, Colorado, and to annul certain mesne conveyances, whereby the title to the same was transferred from Turner to Moffat. Upon the admission of Colorado into the Union in 1876, this action was transferred to the Circuit Court of the United States, for the District of Colorado, and there prosecuted to final judgment, and a decree rendered cancelling the said patent and all of said deeds.

Upon July 17, 1875, the bill was dismissed as to Turner, Harris, Porter, and Beck.

Pleadings.

Upon July 19, an amended bill was filed, charging that complainant was the owner in fee simple of the south-east quarter of section eight, township twenty-three, South of range fifty-two West of the sixth principal meridian, situate in Bent County, Colorado Territory, subject to the right of pre-emption under the Act of Congress entitled, "An Act appropriating the proceeds of the sale of public lands, and to grant pre-emption rights," approved September 4, 1841.

That on the sixteenth day of May, A. D. 1873, Irving W. Stanton was the register and Charles A. Cook the receiver of public moneys of the United States Land Office at Pueblo, Colorado, and upon that day, some person, to complainant unknown, personated Eli Turner, a fictitious person, and made and filed a declatory statement in writing in said Land Office, describing the above land, and declaring his intention to pre-empt the same, and made and filed an affidavit before said Stanton as register, wherein the so-called Turner deposed he had made settlement upon and improved said land in good faith, and desired to appropriate it to his exclusive use and benefit; that he had not, directly or indirectly, made any contract or agreement with any person by which the title he might acquire from complainant would inure to the benefit of any person other than himself, and did, upon the date aforesaid, procure Simeon D. Porter and Anson Beck to appear before said Stanton, the register, did make, subscribe and file an affidavit, wherein they appear to have deposed and sworn that said Turner was over the age of twenty one years and a citizen of the United States, and an inhabitant of said tract of land; that no other person resided upon the same, and that said Turner had built a house and made other improvements on said land, and had lived in and upon the same and made it his exclusive home from the twentieth day of May, 1872, to the date of making said oath; that he did not remove from his own land within the Territory of Colorado to make

said settlement, and that he had plowed, fenced and cultivated about three acres of said land; that upon proof being so made complainant issued patent in the name of said fictitious person, called Turner, for said land, bearing date October 4, 1873; that in issuing said patent complainant confided in the truth of said statements, but was thereby deceived, defrauded and mislead; that in truth no such person as Eli Turner ever resided upon, improved, inhabited or occupied the said land; that the statements in said affidavits and proofs where wholly, entirely and absolutely false; that afterwards and on the twenty-third day of June, 1873, said Stanton, Cook and David H. Moffat, Jr., did procure some person, to complainant unknown, to personate said Eli Turner, and in his name to make and execute a deed of conveyance to the above land to one Thomas Harris, and afterwards and on the twenty-sixth day of June, 1873, said Stanton, Cook and Moffat did procure some person to personate said fictitious person, called Harris, and in his name to make and execute a deed of conveyance for the above described land to said Moffat, which deeds of conveyance were duly recorded in the office of the County Clerk in and for Bent County, on the fourteenth day of November, 1873; that said deed was made after the entry of said land and prior to the issuing of a patent for the same.

That said Moffat, at the time of the pretended conveyance from said fictitious person, called Harris to him, had knowledge and well knew of all of his acts of fraud above stated, committed in procuring the title to said land; and that said Stanton, as register, and said Cook, as the receiver of public moneys of said land office, and said Moffat combined and confederated with persons to complainant unknown, to wrong and defraud complainant out of its said lands, wherefore it asks that said patent and said deeds from said Turner to Harris, and from Harris to Moffat, be cancelled and annulled.

Remarks.

To this bill there are twenty-seven interrogatories attached, to be propounded to said Stanton, Cook and Moffat, whereby the conspiracy and fraud alleged in the bill was attempted to be discovered; but none of said interrogatories were answered, because under the statute defendants could be put upon the stand and made witnesses for the complainant.

Afterwards, and upon the twenty-fifth day of January, 1877, complainant dismissed its bill as to Cook and Stanton, and upon the seventeenth day of February, 1877, said Moffat filed his ANSWER therein, admitting complainant was, prior to the sixteenth day of May, 1873, the owner of the premises in question, and denied its ownership after that date; admits such land was subject to pre-emption upon the sixteenth day of May, 1873; that as to the allegations of the bill that some person represented a fictitious individual called Turner, and the making and filing of said statements and affidavits as to the residence of said Turner upon the land, and his improvements thereon, and his right to pre-empt the same, he denies all personal knowledge; but on information and belief avers that said allegations were untrue, and that said Turner was not an unreal person, and that said entry was properly made by persons qualified to pre-empt and enter the same; admits the conveyance from Turner to Harris, and from Harris to himself; denies all knowledge of any conspiracy on the part of Stanton and Cook, or with any other persons connected with the pre-emption and entry of said land; denies all knowledge of any fraud relating to the procuring of title to said lands; and avers that he purchased said land in good faith and in the belief that there was no question relating to the title thereto; that all the proceedings relating to the pre-emption and entry thereof were regular and in conformity with the law, and prays the same benefit in his answer as

though he had demurred to said bill, which answer was put in under the oath of the defendant.

Stanton and Cook also answered said bill, denying all the fraud charged in the bill, and averring that some persons whom they supposed to be said Turner, Beck and Porter, appeared in said Land Office and signed said papers, and made, took and suscribed the oaths as charged in said bill.

Amended Bill Filed.

And afterwards and on the seventeenth day of February, 1877, complainant filed its second amended bill against Moffat, charging that in the month of May, 1873, and for a long time before and after that date, Irving W. Stanton was register and Charles A. Cook was the receiver of the public moneys of complainant's Land Office at Pueblo, in the State of Colorado, duly appointed and commissioned as such; that while holding such offices, respectively, they conspired and confederated with each other to cheat and defraud complainant out of its patent for the South-east quarter of section eight, township twenty-three, South of range fifty-two, West of the sixth principal meridan, on the pretext that the same was due a person who had done all the acts and performed all the duties required by the Acts of Congress in that behalf; that they wrote out in the form prescribed by law and the regulations of the Commissioner of the General Land Office certain papers called a declaratory statement in the fictitious name of Eli Turner, and signed such fictitious name to said statement, which said fictitious name was said to declare his intention to claim said land as a pre-emptor, which papers purports to bear date May 16, 1873; that at the time of making and signing said declaratory statement, said Stanton and Cook wrote out, signed and executed in the name of said supposed person, certain other papers constituting the proof of pre-emption required by the Acts of Congress and the rules of the General Land Office in that behalf, consisting, among other things, of an affidavit purporting to have been sworn to be-

fore said Stanton, as the register, by such supposed person, wherein it was said that such supposed person had made settlement and improved said land in good faith, intending to appropriate it to his exclusive use and benefit, and not for the purpose of sale and speculation; that he had made no agreement in any way or manner with any person, by which the title he might acquire thereto would inure to the benefit of any person other than himself; and an affidavit was made, purporting to have been signed and sworn to before said Stanton, by two other supposed persons, viz: Simeon D. Porter and Anson Beck, which affidavit was written out by said Stanton and Cook, and in which said Turner was said to be a single man over the age of twenty-one years, and a citizen of the United States, and an inhabitant of said piece of land; that no other person resided upon it; that said Turner made settlement upon the same upon the tenth day of May, 1872, and made improvements upon said land; that he had built a house upon said land and was living therein, and made it his exclusive home, and had done so since May, 1872; that he did not remove from his own land within the Territory of Colorado to make said settlement; that he had plowed, fenced and cultivated about three acres of said land; that at and before the time said Stanton and Cook wrote out, signed and executed said papers, said Cook was possessed of a certain scrip, called Agricultural College Scrip, issued to the State of Florida in pursuance of an Act of Congress in that behalf, which scrip was endorsed in blank by one W. D. Bloxham who was authorized by the legislature of the State of Florida to endorse and deliver such scrip; that said Stanton and Cook inserted said fictitious name and residence of said supposed person in said College Scrip and located said scrip on said land, and they did divers acts in said fictitious name to cause complainant to believe that said Eli Turner was a real and not a supposed person; that such supposed person actually appeared before them and made the several statements and proofs required by law and regulations of the General Land Office

to make a valid pre-emption; that under the rules and regulations of the General Land Office it was the duty of said Stanton and Cook to make out declaratory statements and certificates setting forth in substance that such person had located such scrip on said land and forward a duplicate thereof to the General Land Office, and deliver the other to the person making the location; that said Stanton and Cook, at the time of writing and preparing said proof in the name of such fictitious person, made out by color of their said office a certificate setting forth that the supposed person had located said scrip on the above described land, and had made due proof of his right to pre-empt and receive a patent for the same, whereupon said Stanton and Cook, by color of their said office, forwarded said proof and one of said duplicate certificates of location of said Agricultural Scrip to the General Land Office at Washington, and requested a patent for said land to issue in the name of said supposed person; that after forwarding such proof of pre-emption and said duplicate certificate showing such Agricultural scrip had been laid upon said land, upon the sixteenth day of June, 1873, Jerome B. Chaffee, as the agent of the defendant Moffat, appeared before the General Land Office and presented the other duplicate certificate of location and requested a patent to issue to said supposed person, to be sent to him, said Chaffee; and complainant, confiding in the honesty of its officers, Stanton and Cook, and believing the statements contained in said supposed proofs of pre-emption and certificate of location to be true, and that a person existed who represented said fictitious name, issued a patent on the fourth day of October, 1873, for said land; that no person by the name of Turner ever settled upon said land or improved the same; that no person appeared or presented himself before said Cook or said Stanton, or either of them, at any time, or made a declaratory statement or proof of pre-emption or Agricultural College Scrip location, either as pre-emptor or witnesses as by said proof of pre-emption and location was supposed; but the same and each of them were false and fraudulent,

and were designed, made and executed by said Stanton and Cook in the manner aforesaid, for the purpose of fraudulently depriving the complainant of its title to said land and investing the same by fraudulent means in said Moffat; that said Moffat now has said patent and claims to hold the legal title to said land and to be the owner thereof; that said Moffat received said duplicate receipt of entry from said Cook shortly after the making of the same by said Stanton and Cook, and afterwards said Moffat placed the same in the hands of said Chaffee to be presented to said Land Office; that at the time of doing these things said Moffat well knew the pre-emption of said land had been fraudulently made; that the statements contained in said proofs and certificate were false and fraudulent; that said Moffat now holds a deed purporting to have been made and executed on the twenty-third day of June, 1873, in the name of said Eli Turner, and to have been acknowledged by him in due form of law on the same day, conveying the above described land to one Thomas Harris, who was also a fictitious person; and said Moffat also holds a certain other deed purporting to have been made by said Thomas Harris on the twenty-sixth day of June, 1873, for said land, and acknowledged by him in due form of law; that said Moffat, upon the fourteenth day of November, 1873, caused said deeds to be recorded in the office of Clerk and Recerder of Bent County, Colorado, and the same now remains of record therein; that said Moffat now holds said patent, and well knew when he received the certificate from Cook the same had been obtained by fraudulent means; that such conveyances were a cloud upon the title of complainant to said land and tended to depreciate the value and sale thereof and to prevent improvement under the acts of Congress. Wherefore complainant prays that said patent may be set aside and declared void and delivered up to be cancelled; that said deed of conveyance from said supposed Turner to said Harris and from said Harris to said Moffat may be set aside and declared void as against complainant as a cloud upon its title.

That afterward and upon the seventeenth day of February, 1877, said Moffat filed his answer to said second amended bill, admitting that prior to said sixteenth day of May, 1873, complainant was the owner of the ground described; denies that said complainant since that date has been the owner thereof, or is in anywise interested therein; denies that the same is now subject to the right of pre-emption; admits that Stanton and Cook were respectively the Register and Receiver of the Land Office at Pueblo, Colorado; denies that while holding said offices they conspired or confederated with each other for the purpose of wronging and defrauding complainant out of a patent for the land described in the complaint; avers that on the sixteenth day of May, 1873, a declaratory statement was made and filed in said Land Office by one Eli Turner, which was in due form required by law, in which statement said land was correctly described, and said Turner declared his intention to claim and hold the same as a pre-emptor; denies that said Turner was a fictitious name, but avers the name signed throughout was the real name of the pre-emptor; admits that at the time of making the declaratory statement there was written out and signed other papers constituting the proof of pre-emption required by the acts of Congress, consisting of an affidavit sworn to before said Stanton as the Register by said Turner, and wherein he says he made settlement upon and improved said land, intending to appropriate it to his own exclusive use and benefit; that he made no agreement in any way or manner with any person whomsoever by which the title he was about to receive would inure to the benefit of any person other than himself; denies that said person was an unreal or fictitious one, but avers said Turner to have been a real person; admits that at the time of the making of said declaratory statement there was an affidavit made and executed before said Stanton as the Register by two persons, respectively, Simeon D. Porter and Anson Beck, who deposed, among other things, that said Turner was a single man, over the age of twenty-one years, and a citizen of the

United States, and an inhabitant of said land; that he had resided thereon since May, 1872; that he had built a house and made other improvements on said land and made such house his exclusive home from the twentieth day of May, 1872, and that said pre-emptor did not remove from his own land in the Territory of Colorado to make such settlement, and that he had plowed, fenced and cultivated about three acres of said land; denies that the names of said Porter and Beck were unreal and fictitious names, but avers the contrary thereof to be the truth; disclaims all knowledge, information or belief as to whether said Cook held Agricultural College Scrip from the State of Florida or elsewhere; avers that the location of said scrip upon said land in the name of said Turner was regular, and was not done by said Cook or Stanton or either of them, and that the pre-emptor and his witnesses were real and not fictitious persons; admits that said Stanton and Cook, in pursuance of their duty as Register and Receiver of said Land Office, sent to the General Land Office at Washington a statement, in substance, that said Turner had located said Agricultural Scrip on said land and made due proof of his right to pre-empt the same; denies that said Chaffee, at any time, as his agent, appeared before the General Land Office and presented such duplicate certificate of location, or requested said officers to cause a patent to issue to said land; admits that after the pre-emption of said land, and on or about the fourth day of October, 1873, a patent was issued in the name of said pre emptor, Turner, conveying the title in fee of said land to said pre-emptor; denies that said complainant, after the issuing of said patent, transmitted the same to said Chaffee for the use of this defendant; avers that said Turner did settle upon said land, and that said Porter and Beck, as witnesses, appeared and presented themselves before said Stanton and Cook, or one of them, and made the declaratory statement and proof of pre-emption, as required by law, which persons were real and not fictitious ones, and that said proceedings were not false and fraudulent, neither were said papers as made out and

executed by said Stanton and Cook, or either of them, false and fraudulent; admits he claims to hold the legal title, and to be the owner of said land by virtue of certain conveyances from Turner to Harris, and from Harris to himself, whom he avers to be real persons; denies he received a duplicate certificate of pre-emption of said land from said Cook; denies all Chaffee's agency in the premises; denies he had any knowledge of any fraud or of any alleged fraud relating to the procuring of title to said land from complainant; avers that he purchased said land in good faith, and in the belief that there was no question relating to the title thereto, and supposing that all the proceedings relating to the procurement of title were regular and in conformity with law, which answer was put in under oath.

Afterwards and upon the nineteenth day of February a replication was filed to said answer.

With this case was consolidated seventeen other cases, numbered from eleven to thirty-five inclusive, brought by complainant against the same defendants, to cancel the patents to seventeen other pieces of land, which consolidated case was known as number nine. These other cases involved precisely the same questions, and the respective bills contain substantially the same allegations. The consolidation of so many cases involves the title to over 3,800 acres of land, the patents to which are sought to be annulled by this proceeding.

The grounds upon which the patents and deeds are attacked are

First—That Irving W. Stanton, as the Register, and Charles W. Cook, as the Receiver of public moneys at the Land Office at Pueblo, Colorado, while they were holding said respective offices and discharging the duties pertaining thereto, combined and conspired together to wrong and defraud the government and to cause a large amount of land

to be entered in the name of mythical and fictitious person, or persons, under an assumed name representing some fictitious and mythical individuals and the affidavits and proofs of pre-emption, settlement and improvement, by which the pre-emption purported to have been established, were likewise fictitious and mythical individuals, and all such papers were made out by said Stanton and Cook, or by their direction, and the witnesses under assumed names swore to such proofs of pre-emption, settlement and improvement.

Second—That the allegations of settlement and improvement upon the several tracts of land, so entered and patented as stated and set forth in the several final proofs and affidavits upon which said patents were issued, were each and all of them false and fraudulent, and no settlement or improvement whatever was ever made upon any of said lands by any of said alleged pre-emptors.

Third—That the deeds whereby the title was conveyed to Moffat were executed by men assuming a fictitious name, and the supposed title obtained from the government under the patent was, by the use of such fictitious names and fraudulent practices, transmitted and lodged in said Moffat.

The case was submitted upon oral testimony in open court and upon depositions, and the Court found the issues in favor of the complainant and decreed the cancellation of all the patents and annulled the same, and also decreed the several mense conveyances whereby the purported title under the patent was conveyed to Moffat, to be void and of no effect, and adjudged defendants to pay the costs. From which decree this appeal is prosecuted.

The errors assigned and upon which I propose to discuss this case are as follows:

First Error—That the Court was not authorized from the testimony to find that the respective patentees were fictitious persons, against the presumption flowing from the issu-

ing of the patent and the several certificates issued by the Register and Receiver, certifying that a pre-emption had been made in conformity with law and the regulations of the land department and the proper settlements and improvements had been made upon the land by a person authorized to make the pre-emption. That in this respect the decree was not warranted by the evidence.

Second Error—That inasmuch as all the fraud charged in the bill was committed by Stanton, as the Reigster, and Cook, as the Receiver of public moneys of the United States Land Office at Pueblo, the Court erred in not giving the patent the force and effect of a good and valid conveyance as against Moffat, and not holding that the government was bound by what the Register and Receiver certified was done in pre-empting the land and in making proof of settlement thereon as against Moffat, and in visiting the wrongful acts and practices of the Register and Receiver in entering this land upon Moffat, and not upon the Government, and decreeing the land was never entered or that the patentees never actually existed.

Third Error—That the Court below erred in not decreeing defendant was an innocent purchaser for value and as such was protected from the evil consequences flowing from the fraudulent method by which the patents were issued, if fraud was practiced in procuring these patents.

Fourth Error—No offer is made in the bill to return the scrip or money received for the land. This is inequitable and the decree is wrong, and should be reversed for want of equity in the bill.

Argument.

First Error—That the Court was not authorized from the testimony to find that the respective patentees were fictitious persons against the presumption flowing from the issuing of the patent, and the several certificates issued by the register and receiver certifying that a pre-emption had been made in conformity with law and the regulations of the Land Department, and the proper settlements and improvements had been made upon the land by a person authorized to make the pre-emption. That in this respect the decree was not warranted by the evidence.

The discussion of these questions require a reference to Sections 2259, 2262, and 2263, R. S. U. S., p. 415, which sections are as follows :

SEC. 2259. Every person, being the head of a family, or widow, or single person, over the age of twenty-one years, and a citizen of the United States, or having filed a declaration of intention to become such, as required by the naturalization laws, who has made, or who hereafter makes, a settlement in person on the public lands subject to pre-emption, and who inhabits and improves the same, and who has erected or shall erect a dwelling thereon, is authorized to enter with the register of the Land Office for the district in which such land lies, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land.

SEC. 2262. Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the register or receiver of the land district in which the land is situated that he has never had the benefit of any right of pre-emption under section twenty-two hundred and fifty-nine ; that he is not the owner of three hundred and twenty acres of land in any State or Territory ; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use ; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself ; and if any person taking such oath swears falsely in

the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of *bona fide* purchasers, for a valuable consideration, shall be null and void, except, as provided in section twenty-two hundred and eighty-eight. And it shall be the duty of the officer administering such oath to file a certificate thereof in the Public Land Office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

SEC. 2263. Prior to any entries being made under and by virtue of the provisions of sections twenty-two hundred and fifty-nine, proof of the settlement and improvement thereby required shall be made to the satisfaction of the register and receiver of the land district in which such lands lie, agreeably to such rules as may be prescribed by the Secretary of the Interior; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

It is conceded it is necessary to the validity of a patent to have a grantee in *esse* to receive the title, but I contend that, under the first amended bill, complainant's allegations show there was a grantee, because it is expressly averred that some person appeared under an assumed name and represented Eli Turner, and made proof of settlement and pre-emption as such, and had witnesses who proved his identity. Under the amended bill it is averred that Eli Turner was a fictitious person, but it is not averred that some individual did not appear and represent himself to the Register and Receiver as Eli Turner. If there is any state of facts under which the Court can presume the patent to have been lawfully issued, it will presume those facts existed.

The complainant produced witnesses by the name of Van Horn, Boggs, Cahil, Vandiver, Woodworth, Beck, Carpenter, Bowman, Carroll, Boomer and Hill—eleven in all—who testified they were residents of Las Animas County; that they were well acquainted with the land in question; that no improvements were put upon the lands by the persons named as the patentees. To that extent their testimony is reliable, and establishes the fact that no

improvements or settlements were made upon the land such as the pre-emption papers stated. They also severally testify that they did not know Eli Turner, Thomas Harris, Simeon D. Porter, Anson Beck, James C. Hall or Samuel A. Long, nor any of the respective grantees or witnesses used in making proof of settlement and cultivation by the respective pre-emptors. From this testimony the presumption arises that men bearing those names did not live upon the land, but it fails to establish the fact that some persons did not appear before the Register and Receiver and assume to represent Simeon D. Porter and the other patentees, and make the necessary proof of pre-emption and settlement. The presumption of law is that the Register and Receiver did their duty in the premises. Irving W. Stanton, the Register, and Charles A. Cook, the Receiver, stated and certified (page 102 of the record),

That Simeon D. Porter did, upon the sixteenth day of May, A. D. 1873, locate upon lots one and two of section six and the North half of the North-east quarter of section seven, township twenty-three, south of range fifty-two, West, being 160 acres, and Charles A. Cook, the Receiver of the Land Office, stated and certified,

That on May 16, 1873, he received from Simeon D. Porter, of Bent County, Colorado, the sum of $11.06, being in full for 8 85-100 acres of lots one and two in section six, and the North half of the North-east quarter of section seven, township twenty-three, South of range fifty-two, West, being the excess in said tract over the area located in virtue of Agricultural College Scrip Certificate No. 176, State of Florida (pages 102 and 103 of the record); and said Stanton further certifies,

That said Porter, upon the day and date last aforesaid, before him, subscribed and swore to a certain affidavit, alleging the non-mineral character of the land located, which verification was taken by said Stanton as Register of the United States Land Office. And upon the same

day, viz: May 16, 1873, both Stanton and Cook, as the Register and Receiver, further certify as follows:

LAND OFFICE, PUEBLO, COLORADO, }
May, 16th, 1873. }

We hereby certify that the attached Scrip No. 176, State of Florida, was on this day received at this office from Simeon D. Porter, of Bent County, Territory of Colorado.

IRVING W. STANTON, *Register.*
CHARLES A. COOK, *Receiver.*

And that said Porter did upon the same day locate said lots one and two in section six, and the North half of the North-east one-fourth of section seven, township twenty three, South of range fifty-two West, 160 85–100 acres of land, in satisfaction of the attached Scrip No. 176 of the State of Florida. And they further certify as follows:

LAND OFFICE, PUEBLO, COLORADO, }
May 16th, 1873. }

We hereby certify the above location is correct, being in accordance with law and instructions.

(Signed) IRVING W. STANTON, *Register.*
CHARLES A. COOK, *Receiver.*

The register and receiver made similar certificates, excepting as to the names of the pre-emptors and the description of the land, to each and every pre-emption.

Nothing whatever was said by any witness regarding the alleged irregularities of the Land Office. In that respect the allegations of the bill were wholly and entirely unsupported by proof, except the testimony of some experts who testified that nearly all the pre-emption papers and proofs of pre-emption seemed to have been made out and written by one person, named Williams, an employe or attache of said Land Office. Complainant put Cook, the receiver, on the stand, but failed to ask him any questions regarding any allegations of the complaint as to the fraudulent operations practised by himself and Stanton in the making of these entries. If the theory upon which the bill was drawn be

the true one, Stanton and Cook knew more about these fraudulent entries than any other persons, and complainant had it in its power to put these men upon the stand and ask them about it. Had they refused to answer any proper question as to the alleged fraudulent notices, then some presumption might have arisen that the allegations of the bill were true, and that they would not criminate themselves by answering, but nothing of the kind was attempted. It is a presumption of law that when a party has proof and will not offer it, that it was suppressed because it would militate against his case. The court below should not have presumed Cook and Stanton committed the frauds charged against them, but should have required some proof other than what was produced upon that point. Complainant had it in its power to investigate by asking the register and receiver if they perpetrated the fraud, or if they knew who did it. The only reason why the interrogatories attached to the bill were not answered, was that, under the law, these parties were witnesses and were compelled to answer, except as to matters which would criminate themselves, and it was for the witnesses alone to claim that exemption. In that respect complainant's case is strikingly weak. And where the patent is supplemented with the papers showing the regularity of the proceedings in making the entry in the Land Office, I submit, the decree in that respect was unsupported by the evidence, and the Court should not have found these respective grantees were fictitious persons; and, too, it did not appear but what persons assuming to represent the respective patentees appeared and made the entries and the proofs of settlement and improvements upon the land. Such was the natural presumption arising from the several papers offered regarding the pre-emption of each piece of land. Fraudulent proof of pre-emption and a real pre-emptor may co-exist. If a person assuming to be a settler should make out his proof of pre-emption by filling out the necessary affidavits in the names of imaginary persons, and by that means obtain a certificate of entry by means of which a patent issued, it would not be ques-

tioned but that the patent ran to a real grantee, notwithstanding the fraud; therefore, in this question as to whether there were real grantees, the alleged frauds connected with the proofs of pre-emption have no bearing.

The presumption of an actual grantee from the patent itself must be overcome by proof. It will not be disputed that the pretense the patentees were fictitious, falls to the ground if the facts were, that they were actual parties though non-residents of Bent County and the State of Colorado, and by means of false names caused the entries to be made. Upon this point the case of Thomas vs. Wyatt, 31 Mo. 188, is an authority in point.

In that case two patents for the same piece of land were concerned, one running to the assignee of a certificate of entry issued to Samuel Johnson, the patent being dated on the fifth day of January, 1843, the other, a patent issued to Samuel S. Coleman, as assignee of Samuel Johnson, dated March 14, 1845. The case turned on whether James Coleman and Samuel Johnson were the same identical person —the name, Samuel Johnson, being assumed by Coleman to carry out certain fraudulent designs. As the court puts it:

"This case, then, depends on facts to be determined by a jury. These facts are, whether James Coleman and Samuel Johnson were not the same identical person, and the name Samuel Johnson was assumed by Coleman to carry out his fraudulent designs. If these facts are found, the plaintiff will be entitled to recover. If, on the other hand, the jury believe from the evidence that the Government in issuing the patents intended them for another person distant and separate from James Coleman, and that there was *no* such person ever in existence, then, in the nature of things, no title can pass by the patent."

The Court stated the law bearing on this subject in the following language:

"The only theory that will solve the question involved in this litigation (and we think there is sufficient evidence to put it to a jury) is, that Samuel Johnson is an assumed name of James Coleman and not a fictitious person. If we regard Coleman as usurping the name of Johnson when it suited his purposes, we have a clue by which we may be guided to the justice of this case. We have no doubt that this was the light in which this matter was viewed in the Court below, but as the case was tried by a jury we do not conceive that the language of the instruction was sufficiently pointed to direct their attention to the matter really in issue. If James Coleman used the name of Samuel Johnson to designate himself, when he thought proper, and made the entry in the name of Samuel Johnson for himself, merely using that name as he would the one by which he was usually known, and endorsed it in the name of Samuel Johnson with the same view, then the transaction is to be regarded as though James Coleman had used instead of the name 'Samuel Johnson' the name 'James Coleman.'"

I submit this authority as a sensible and reasonable one, which should be followed, and, if followed, it determines the present question. There can be no doubt that the doctrine it lays down is sound law.

The Court has to decide a question of fact as well as a question of law. Has it before it proof enough to allow it to overturn the presumption, flowing from the patent itself, that an actual grantee existed, and to hold that it was intended to issue the certificate of entry and patent to purely fictitious persons, and not to parties who applied for them and obtained them, no matter through what fraudulent means? Supposing that a party one day makes proof of settlement, etc., in his own name, and obtains a certificate to a certain quarter section. A month afterward he presents himself under an assumed name, makes proof of settlement on another quarter section, and obtains another certificate of entry. Would there not be an actual grantee in each case—namely: the same party—so that the grant in each

would be an operative one except as it might be subject to annullment on account of the fraud? The difference between such a case and that where there is a fictitious grantee is obvious. The distinction is between a fraudulent and a fictitious grantee. To maintain the position that a grantee was fictitious it is necessary to establish that there was no party or person in existence who assumed to be a settler. Proof of fraudulent settlements by a number of different persons destroys the claim and theory of fictitious grantees; a fraudulent grantee cannot be a fictitious grantee.

It is quite consistent with the proofs that certain parties did actually present themselves at the Land Office at Pueblo, and make the proofs which formally entitled them to certificates of entry. That being so, the certificates and patents issued upon them are not void for want of a grantee, whatever the fraud may have been. To find that all the proceedings were a fiction, and that no parties presented themselves as actual settlers, under real or assumed names, is to strain the proofs beyond their natural and reasonable import, and, in straining them, to overthrow the presumption flowing from the patents, to the destruction of the rights of the *bona fide* purchasers.

I think this will very clearly appear from a full examination of the testimony.

The bill alleges the parties to the conspiracy through which the patents were obtained were the Register and Receiver of the Land Office. This it was necessary to allege to maintain the complainant's position that the pre-emptors were fictitious. Certificates of entry running to fictitious persons could not have been issued without the co-operation of the land officers—as, if there were no persons at all representing the pre-emptors, these officers must have known it. They could not have honestly certified that persons appeared before them as pre-emptors and witnesses if no such persons appeared. It would be impossible to carry out a scheme of pre-emption in the names of

fictitious people without these officers being aware of it and aiding it. Actual persons might appear at the Land Office and, through false proofs of pre-emption, deceive the officers and enter the lands, but in such a case it could not be claimed that the grantees were fictitious, whether they assumed false names or not. The complainant could not have presented that as the true situation, for it would have been an admission that there were actual grantees. Therefore, to maintain its ground that the pre-emptors were fictitious, it has been driven to the position that the land officers were active parties in the fraudulent conspiracy.

Has it proved this in any sufficient way?

The presumption which attends the official action of all public officers is that they have done their duty. That presumption must be taken account of as a factor in this case. It rests upon the complainant to overcome it; and this can only be done by evidence which is convincing and to the point.

There is no direct testimony implicating the register or receiver.

No party who had any personal knowledge of any of the facts attending the pre-emption of these lands appeared as a witness. The Government did not call a single witness who was concerned in their pre-emption. It has not attempted to show to the Court what fraudulent methods were used to obtain their pre-emption, if any fraudulent methods were used. The Government rests its entire case on inferences; and the only facts it has sought to prove as a basis for the inferences which it would have the Courts draw are, that no parties resided in Bent County bearing the names of the pre-emptors.

Can the Court fairly find from those facts that the register and receiver were guilty of the criminal malfeasance with which they are charged, or even of negligence? Assuming the fact to be that there were no persons of that

name residing in Bent County—and the inference is more probable that the pre-emptors were persons residing in the vicinity who assumed false names, or that they were non-residents, than the inference that the register and receiver, with one or more other parties, made the false proofs of pre-emption, and issued the certificates of entry to fictitious persons—requiring, as this last inference does, the most deliberate and criminal malfeasance on the part of public officials. If the way in which these lands were pre-empted was the making of false proofs of pre-emption by residents of Bent County, who assumed false names, or by non-residents using their own names, precisely the same proof could be made by the Government that it has made, and yet the register and receiver be innocent of any wrong, and actual grantees exist.

It is to be observed that the land officers residing and having their office at Pueblo, could not be expected to be acquainted with the inhabitancy of the particular quarter sections of the pre-emptible lands in that county. So far as the inhabitants of the county were concerned, their knowledge must necessarily have been very slight, as the region where these lands are situated is a hundred miles distant from Pueblo, and there was no railroad South of Pueblo. Personal investigation on the spot or personal knowledge of the facts entitling a person to enter lands was not required of these officials. These being the facts, it is obvious that residents of Bent County, assuming false names, or non-residents claiming to be residents of that County, might appear before the register and receiver and make the necessary proofs of pre-emption and obtain certificates of entry without the slightest fraud or negligence on the part of those officers. How, then, can the Court find from the bare facts that there were no persons of the names of the pre-emptors residing in Bent County that the register and receiver were guilty of the frauds charged upon them? What would be the situation if those officials were on trial for the criminal malfeasance with which they are

charged, and the proofs were precisely the same as they are in this case? Would the Court be warranted in submitting the question to the jury? Would it not rather be compelled, from the proofs, to direct an acquittal on the ground that there was no substantial evidence from which the jury could find that those officers were guilty of the malfeasance charged against them?

The issue in this case is not distinguishable from that. The case, so far as this point is concerned, turns on the question whether those public officers were guilty as charged in the bill, or not.

The testimony, even of the witnesses for the Government, tended to show there must at least have been some twenty persons engaged in making the proofs of pre-emption. That evidence we regard as most significant. In the first place the secrets of such a conspiracy as is alleged in the bill could not have been so preserved that the government could give no direct testimony of its existence if there had been twenty persons engaged in it. Again, had the land officers engaged in any such conspiracy as is charged, it would have been the heighth of folly and stupidity to employ twenty persons in its consummation when none were necessary. Again, from the appearance of so many persons connected with the pre-emption of the lands, the natural conclusion is directly in favor of my contention in this brief —that there were actual persons who presented themselves at the land office, and obtained certificates of entry running to them. And if it should appear as the result of this testimony that at least twenty persons were concerned in making these proofs, and probably more, then I submit the conclusion is irrestibly that the patentees were not fictitious.

I repeat that the inference to be drawn from this testimony is that Stanton and Cook were not engaged in the conspiracy charged, or in any fraudulent scheme for the entry of these lands. In that event there must necessarily have been patentees, because in each and every case of pre-

emption, the register or receiver has certified under his own hand that the pre-emptor appeared before him in person; that he appeared to be a reputable person, and that he was sworn to the truth of the facts stated in the affidavit before him. In each and every case, too, the register or receiver has certified that a certain witness, knowing the facts necessary to entry, appeared before him in person, and was sworn to the truth of the facts necessary to qualify the pre-emptor for his certificate. If these certificates were true, then, in fact, an individual pre-emptor appeared in every case, and in every case received a certificate; and whether it ran to him in his own, or in an assumed name, he nevertheless was the person to whom the title passed under the authority of the cases cited in this brief.

This Court, in the case of Polk's Lessee *vs.* Wendall *et al.*, 9 Cranch, 97, in speaking of the *quesi* judicial powers of registers and receivers of United States Land Offices, says: "The laws for the sale of public lands provide many guards to secure the regularity of grants, to protect the incipient rights of individuals, and also to protect the State from imposition. Officers are appointed to superintend the business, and rules are framed prescribing their duty. These rules are, in general, directory, and when all the proceedings are completed by a patent issued by the authority of the State, a compliance with these rules are presupposed. That every prerequisite has been performed, is an inference properly deducible, and which every man has a right to draw from the existence of the grant itself. It would, therefore, be extremely unreasonable to avoid a grant in any Court for irregularities in the conduct of those who are appointed by the Government to supervise the progressive course of a title from its commencement to its consummation in a patent."

And when that case was again in this Court, reported in 5 Wheaton, 293, at page 304, the Court again said: "It will be perceived that as to *irregularities* committed by the

officers of the Government prior to the grant, the Court does not express a doubt but that the Government, and not the individual, must bear the consequences resulting from them. On the contrary, it declares that the existence of the grant is, in itself, a sufficient ground, from which every man may infer that every prerequisite has been performed.

It may be urged that, although complainant's proof was very slight as to the fictitious grantees, nevertheless it was sufficient to shift the burthen of proof. Complainant does not occupy that favorable position. It had the means in its power to prove the facts as to these entries by calling the men whom it charges committed the frauds, and they would have been forced to answer, because Cook was examined as a witness on August 6, 1877 (page 129–131 record). All entries were made prior to June, 1873. The Statute of Limitations barred any prosecution for the offenses he had committed.

Sec. 1044 R. S. U. S.

"If the prosecution to which he might be exposed is barred by lapse of time, the privilege ceases and the witness is bound to answer."

1 Greenl. Ev. close Sec. 451.
People *vs.* Mather, 4 Wend. 229 p. 252–5.

The fact the answer might tend to disgrace him would not excuse an answer.

1 Greenl. Ev. Sec. 456, and authorities in Note E.

The prosecution having evidence by which the fact could be established has failed to produce it. This Court, then, should not indulge in any presumptions of irregularities on the part of the register and receiver in the making of the entries, but should say complainant must fail for want of proof. That it must be presumed the papers in the record speak the truth, especially when unchallenged by competent evidence, and that the decree upon this point

is not sustained by testimony, and is rendered against the evidence and must be reversed.

The bill alleges that Stanton and Cook, for the purpose of having the patented title lodged in Moffat, executed deeds in the names of fictitious persons, and had them acknowledged. It is worthy of notice that Samuel S. Landon took several of these acknowledgments, and he says that the men did appear before him and acknowledged the deeds as his certificate states. (See his testimony, pages 106 to 108 of the record, inclusive.) His testimony certainly does not support the allegations of the bill, and if they had produced Messrs. Kellogg and Cass, men well known in Colorado, they would have given the same testimony that the deeds were acknowledged by persons at least assuming to convey the title, and that the acknowledgements were not put upon the paper when no one appeared.

Second Error—That inasmuch as all the fraud charged in the bill was committed by Stanton as the register and Cook as the receiver of public moneys of the United States Land Office, at Pueblo, the Court erred in not giving the patent the force and effect of a good and valid conveyance as against Moffat, and in not holding that the government was bound in what the register and receiver certified was done in pre-empting the land and in making proof of settlement thereon as against Moffat and Carr, and in visiting the wrongful acts and practices of the register and receiver in entering this land upon Moffat and not upon the government, and decreeing the land was never entered, or that the patentees never actually existed.

The entry of the lands and the patents issued by the Government are declarations by it that all the steps required by law antecedent to the entry of the lands and the issue of the patent have been complied with, and the Government is conclusively bound by these declarations as against a bona fide purchaser for value. It may not, therefore, as against such a purchaser, as-

sert that the lands were never entered or that the patantees did not actually exist.

The principle here asserted is that, as the validity and sufficiency of the steps to be taken antecedent to the issue of a patent are to be determined by certain officers to be appointed by the Government in the exercise of a judicial function, the Government is bound by their determination, even if they acted fraudulently and those determinations were false, as against a purchaser for value and without notice.

The nature and character of the functions performed by the officers of the Government are a matter of easy determination.

Section 12 of the Pre-emption Act of 1841 (See Stat. 88 at large, p. 456, R. S. U. S., Sec. 2264,) enacts as follows:

"And be it further enacted, that prior to any entries being made under and by virtue of the provisions of this Act, *proof of the settlement and improvements thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie*, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void."

The rules promulgated for the guidance of these officers require them personally to take the most careful and elaborate proofs by affidavit of the facts essential to the entry of public lands, and the pre-emptor and his witness or witnesses are required to attend personally before these officers in the making of said proofs.

Section 2262 of the Act of 1841, R. S. U. S., provides—

Before any entry is allowed the person asking it must make oath before the register or receiver that he has never had the benefit of any right of pre-emption under the act; that he is not the owner of 320 acres of land in any State or Territory of the United States; that he has not settled upon the land to sell it on speculation, but in good faith to appropriate it to his exclusive use; and that he has made no agreement by which the title acquired is to inure to the benefit of any other person. The penalty of a false oath in regard to any of these particulars nullifies the pre-emptor's title and any grant or conveyance made by him, *except in the hands of bona fide purchasers for a valuable consideration.*

Thus, before any entry can be made it has to be proved to the satisfaction of the register and receiver, that there has been the settlement upon and improvement of the land required by the act, to wit: *"That a person of the class mentioned in section 2263 has inhabited and improved the land sought to be pre-empted and has erected a dwelling thereon;"* and the allowance of the entry is an adjudication of those facts by the officers appointed by the government. An entry, therefore, is a certification to all the world by the government, acting through its officials, that an actual person, entitled to pre-empt public lands under the law, has settled upon and improved the land entered, and erected a dwelling upon it.

The other facts required to be proved by section 2262 are irrelevant to the validity of the title when it has passed to a *bona fide* purchaser for value, by the express provision of the statute.

May the government, then, after it has, by entering lands, certified to all the world that after due inquiry and proof, made by and before its own officers, it has been by them determined and adjudicated that an actual person has complied with the provisions of law, as to settlement and improvement, insist that the title, after it has passed to a *bona*

fide purchaser for value, is void on the grounds that there was no such person or no such settlement and improvement, and that the same were falsely and fraudulently found to exist by its own officers. There should be little difficulty in maintaining the negative of this proposition.

The judicial character of the functions of the register and receiver in passing upon these matters preliminary to the pre-emption of public lands is well settled, as appears by reference to the following authorities:

Vance *vs.* Burbank, 101 U. S., 514,

Which was a case involving the question whether Scott had resided upon and cultivated the lands in dispute for four consecutive years, and had otherwise conformed to the requirements of the Oregon donation act. This Court, speaking through its Chief Justice, said: "The question in dispute is one of fact. That is to say, whether Scott, when he demanded his patent certificate as against the other contesting claimant, had resided on and cultivated the land in dispute for four consecutive years, and had otherwise conformed to the requirements of the donation act. This was to be determined by the Land Department, and as there was a contest, the contending parties were called on in the usual way to make their proofs." * * * * * * "The appropriate officers of the Land Department have been constituted a special tribunal to decide such questions, and their decisions are final to the same extent that those of other judicial or *quasi* judicial tribunals are."

Steel *vs.* Smelting Company, 106 U. S., 447.
Smelting Company *vs.* Kemp, 104 U. S., 634.
French *vs.* Fegan, 93 U. S., 169, and authorities cited in these cases.

Speaking on this subject, the Court, in Steel *vs.* Smelting Co., 106 U. S., 450, said, with emphasis:

"We have so often had occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public lands, that it creates an unpleasant surprise to find that counsel, in discussing the effect to be given to the action of that department, overlook our decisions on the subject. That department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of the different Acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the *qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale.* Its judgment upon these matters is that of a special tribunal, and is unassailable, except by direct proceedings for its annulment or limitation."

A patent is an official declaration by the Government that all the requirements preliminary to the issue have been complied with.

In Smelting Company *vs.* Kemp, 104 U. S., 640, the United States Supreme Court said on this subject:

"The execution and record of the patent are the final acts of the officers of the Government for the transfer of its title, and as they can be lawfully performed only after certain steps have been taken, that instrument, duly signed, countersigned, and sealed, not merely operates to pass the title, *but is in the nature of an official declaration by that branch of the Government* to which the alienation of the public lands under the law is intrusted, that all the requirements preliminary to its issue have been complied with."

This is so plain that no further citation of authority is necessary, and of course the certificate of entry issued by

the register and receiver, is an official declaration on their part of the existence of the conditions necessary to pre-emption which the statute leaves to their determination. It is by its terms expressly such a declaration.

On thjs point a reference to the entry papers will be valuable to the Court. They explicitly show and assert that an actual pre-emptor and witness or witnesses appeared before the officers and made oath to the necessary facts. It is a falsification of the express assertions of these papers to claim that there was no pre-emptor. A subsequent purchaser referring to those papers to ascertain the regularity of the pre-emption proceedings would find positive declarations of the officers of the government as to every fact upon which the validity of the title to pre-empted lands rests.

To this state of facts I submit that the principle of law enunciated in the case of the *Commissioners of Knox County vs. Aspenwall, 21 How. (U S.) 539*, is applicable as a final solution.

The question presented in that case was the validity of certain bonds issued in favor of a railroad company by a county. The bonds were owned by a *bona fide* purchaser for value.

The objection raised to them was that it being a condition precedent to their issue that it should be authorized by a majority vote of the qualified voters of the county, and no regular election having been held, the bonds were unauthorized and void.

To secure clearness and certainty I give the rulings of the Court in its own language:

"The case assumes that the requisite notices were not given of the election, and hence that the vote has not been in conformity with the law."

"This view would seem to be decisive against the

authority on the part of the Board to issue the bonds, were it not for a question that underlies it; and that is, who is to determine whether or not the election has been properly held, and a majority of the votes of the county cast in favor of the subscription? Is it to be determined by the Court in this collateral way, in every suit upon the bonds, or coupons attached, or by the Board of Commissioners as a duty imposed upon it before making the subscription?"

"The Court is of opinion that the question belonged to this board. The act makes it the duty of the sheriff to give the notices of the election for the day mentioned, and then declares, if a majority of the votes given shall be in favor of the subscription, the County Board shall subscribe for the stock. The right of the Board to act in an execution of the authority is placed upon the fact that a majority of the votes had been cast in favor of the subscription; and to have acted without first ascertaining it would have been a clear violation of duty; and the ascertainment of the fact was necessarily left to the inquiry and judgment of the Board itself, as no other tribunal was provided for the purpose. This Board was one, from its organization and general duties, fit and competent to be the depository of the trust thus confided to it. The persons composing it were elected by the county, and it was already invested with the highest functions concerning its general police and fiscal interests."

"We do not say that the decision of the board would be conclusive in a direct proceeding to inquire into the facts previously to the execution of the power, and before the rights and interests of third parties had attached; but, after the authority has been executed, the stock subscribed, and the bonds issued, and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a *bona fide* holder of the bonds in this collateral way."

"Another answer to this ground of defense is, that the purchaser of the bonds has a right to assume that the vote of the county, which was made a condition to the grant of the power, had been obtained, from the fact of the subscription by the board to the stock of the railroad company, and the issuing of the bonds."

"The bonds on their face import a compliance with the law under which they were issued. This bond we quote is issued in part payment of a subscription of two hundred thousand dollars, by the said Knox County, to the capital stock, etc., by order of the Board of Commissioners, in pursuance of the third section of the act, etc., passed by the General Assembly of the State of Indiana, aud approved fifteenth day of January, 1849."

"The purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power."

See also, Town of Coloma *vs.* Eaves, 92 U. S., 484.
Marcy *vs.* Township of Oswego, 92 U. S., 637.
Humboldt Township *vs.* Long *et al.*, 92 U. S., 642.

The case of Knox County *vs.* Aspinwall, *supra*, has been followed in many other cases. The important principle of law it announced and applied is firmly fixed, and it rests on a strong foundation of justice and business necessity. It saved millions of property invested in good faith in municipal bonds from loss and repudiation by submitting the counties, cities and towns which had them issued to the operation of the same rules of law and equity which govern the relations of private individuals. The legal principle settled by those cases has never been more tersely stated than by Judge Dillon, in the following language: "If upon a true construction of a legislative enactment conferring the the authority, the corporation or certain officers, or a given body or tribunal, are invested with power to decide whether the condition precedent has been complied with, then it may well be that their recital of their determination of a matter

in pais which they are authorized to decide will, in favor of the bond holder for value, bind the corporation."

Dillon on Municipal Corporations, Sec. 253, 3d. Ed.

This statement has the approval of the United States Supreme Court, which has referred to it as "a very cautious statement of the doctrine." (*See Town of Coloma vs. Eaves, 92 U. S., 491.*) Is not this principle decisively applicable to the facts of the present case?

The condition precedent to the issue of a patent to public lands, or the certificate of entry upon which it is issued, is *that an actual person* shall have lived upon the land, improved it, built a dwelling on it, and paid the purchase price. In the bond cases the condition precedent nearly always is that their issue shall have been authorized by a majority vote of the qualified voters of the municipality. The determination of the facts of settlement and improvement by an actual person necessary to entitle that person to an entry of public land is, as we have seen, confided to the register and receiver of the land district—officers of the Government—to whose satisfaction those facts have to be proved. So also as to municipal bonds. There is always some body or officer upon whom is imposed the duty of determining whether or not the majority vote has been obtained, or the other condition precedent complied with. A certificate of entry is a public and recorded statement that it has been proved to the satisfaction of the officers of the Government that an actual person has settled upon and improved the land involved, in compliance with the requirements of the act, and a patent, in the language of *Smelting Company vs. Kemp, 104, U. S., supra, is* "an official declaration by that branch of the Government to which the alienation of the public lands is entrusted that the requirements preliminary to its issue have been complied with." These declarations are the equivalent of the recitals of the officers or bodies to whom is entrusted the duty of determining whether or not the conditions precedent to the issue of bonds have been complied with, that those conditions have

been complied with. If, then, according to this doctrine so firmly established, such recitals in the case of an issue of bonds binds the corporation to everything declared by them, notwithstanding that they are false and fraudulent, surely a certificate of entry and patent of public land must similarly bind the Government to everything declared by them.

The analogy between these two groups of facts and relations is perfect, and the principle of law which governs the one must govern the other. The subject matter of both is property, and to distinguish between them is to resort to sophistry.

It may be argued that this principle should not apply as to the fundamental fact whether or not there was an actual pre-emptor. Such an argument would be that as to the facts of settlement and residence on the land, the certificate and patent are binding, but that they do not conclusively declare the existence of a pre-emptor. Any such distinction, I maintain, is utterly baseless. Settlement and residence imply a person who has settled and resided on the land; it is some particular person who has entered upon the land and taken up his residence upon it. When it is said that a patent is a conclusive declaration of settlement and residence on the land, the full fact expressed by the words settlement and residence is that an actual person has settled and taken up his residence on the land. A settlement and residence without a person is impossible. Whatever announces or declares that there has been a settlement, necessarily announces and declares that an actual person has effected this settlement. In this regard, the separation of these two facts—the settlement and an actual person—are inconceivable. It would clearly seem to be an absurdity to say that a patent is conclusive as to a settlement, but not as to an actual person having made it. With equal force might it be argued that a recital in a municipal bond that its issue was authorized by a majority vote is conclusive only as to the regularity of the election at which the votes

were cast, but not as to an actual election having been held. But the town-bonding cases are directly against that proposition.

There is not wanting the highest judicial opinion in favor of my position.

In the case of Polk's Lessee *vs.* Wendel, 5 Wheat., 293, the Court said, page 304:

"It will be perceived that as to irregularities committed by the officers of the government prior to the grant, the Court does not express a doubt but that the Government, and not the individual must bear the consequences resulting from them." And again, at page 307: "They (referring to the Court) have never expressed an inclination to let in inquiries into the frauds, irregularities, acts of negligence or of ignorance of the officers of the Government prior to the issuing of the grant, but, on the contrary, have expressed the opinion that the Government must bear the consequences." And, in the same case, when previously in the Supreme Court (9 Cranch, 98), Chief Justice Marshall held the same doctrine in the following language: "It would, therefore, be extremely unreasonable to avoid a grant in any Court for irregularities in the conduct of those who are appointed by the Government to supervise the progressive course of a title from its commencement to a consummation in a patent."

See also Patterson vs. Winn, 11 Wheat., 380, 387.
Patterson vs. Jenks, 2 Peters, 216, p. 237.
United States vs. Arredondo, 6 Peters, 729, p. 730.

Thus, both sound principle and authority assert that when the facts antecedent to the issuing of a patent of public lands are left to the determination of officers of the government, and those officers have certified to the existence of the facts so that a patent has issued, the government is bound by the determination of its officers as against purchasers for value without notice, and Courts will not, at the

instance of the Government, allow any inquiry into the irregularities or frauds of those officers with a view to nullifying the patent. Accepting this as the law of the present case, it follows that it must be conclusively presumed in this case that there were actual settlers on the lands in question who had complied with the requirements of the pre-emption act of 1841, and to whom the certificates of entry and patents ran; and the complainant's case, so far as it is based upon the denial of those facts, must fail.

It may be asserted in opposition to this argument that the case quoted holding the finality of the action of the officers of the Land Department of the Government, with respect to the proceedings antecedent to the issuing of a patent, expressly recognize the propriety of a direct proceeding in equity to annul a patent where there have been frauds or irregularities.

My answer to this position is that the direct proceedings referred to simply relate to the right of the Government to proceed against a patentee for the annullment of a patent held by him, obtained through *his* fraud or irregularities, which imposed upon or deceived the officers of the Government. *There is no adjudication countenancing a direct proceeding instituted upon such a ground against a bona fide purchaser for value, when the officers of the Government actually co-operated in the fraud and were the means of its consummation.* I believe I am right in asserting, is there any case or adjudication sustaining such a proceeding against a *bona fide* purchaser of the lands for value under any circumstances. That the right to maintain such a proceeding when it will lie against a party because of his frauds is lost by the transfer of the property to a *bona fide* purchaser for value, is explicitly ruled in the case *of Commissioners of Knox County vs. Aspinwall, 21 How., 545*, as shown by the quotation from that case which I have given. It is indisputable that such a proceeding will lie against a party himself obtaining the patent under certain conditions; but the situation changes the moment the rights of a *bona fide* pur-

chaser for value are introduced. And in no event will such a preceeding lie when it appears that the officers of the Government promoted the alleged frauds.

I urge most strenuously the conclusiveness of the argument presented on this point, and the doctrine upon which it rests, as a complete and just solution of this controversy. That doctrine is indeed but a corrolary from that fundamental maxim of the law that when one of two innocent persons must suffer by the deceit of another, it is more consonant with reason that he who puts trust and confidence in the deceiver should be the loser rather than a stranger.

Carpenter *vs.* Longan, 16 Wall., 271–273.
R. R. Co. *vs.* Schuyler, 34 N. Y., 69.
Griswold *vs.* Haven, 25 N. Y., 599.

The register and receiver were the officers of the government, appointed by it to their places and held out by it to all the world as fit and capable men. The frauds set out in the complainant's bill, if they were committed, were their frauds. They could not have been accomplished without the co-operation and affirmative action of those officers. The question arising upon whom the results of that wrong doing should now be visited as between the government, which was responsible for putting those men in their places, and the owners of the property for value and without notice, there would seem little room for hesitation in deciding that the burden should be borne by the government. Were it an individual who was so situated without doubt it would be ruled that the wrong doing of his agents must be visited upon him. This is the simple justice of the matter. Is the government superior to the rules of justice which are applied to individuals? It would be strange if a Court of equity should hold that the high prerogative of sovereignty was a weapon with which to accomplish a great wrong with impunity. Municipalities, exercising as they do by delegation, high govermental powers, when they sought to escape from liability on their bond obligations, were held to be

subject to the rule of estoppel which is invoked in this case. If they were not superior to it, neither should the government be. The same considerations apply to each.

This suit is not maintainable to set aside the patents *on the ground of the certificates of entry having been obtained through false or fraudulent testimony in the proceedings before the land officers.*

United States *vs.* White, 17 Federal Reporter, 569.

In the Circuit Court for the district of California, Justice Sawyer says: "This is a bill in equity to vacate a United States patent issued to the defendant on the ground that it was obtained upon false and fraudulent affidavits and proofs made under the pre-emption laws. * * * * It is further alleged that said affidavits and proofs were false; that defendant did not make the settlement as stated; did not reside upon said land; and that he did own 320 acres of land elsewhere, and on the ground of these false representations and proofs, complainant asks that the patent be vacated and canceled, and the money paid be adjudged forfeited to the United States."

The learned jurist then refers to the case of the
United States *vs.* Throckmorton, 98 U. S., 68.
Vance *vs.* Burbank, 101 U. S., 514, and then says:

"We think these decisions establish the doctrine on which we decide the present case, namely, that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relations to frands extrinsic or collateral to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered."

"That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts, or documents whose

genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases."

98 U. S., 68.

He further says: "Thus the decisions of the Land Office on applications for patents were put upon the same footing as judgments and decisions of courts and other tribunals like the board of land commissioners." * * *

"Again, it is a principle that, with reference to private parties, a court of equity will not grant relief against a fraud, unless it appears that some damage or injury has been sustained by reason of the fraud: for 'courts of equity do not, any more than courts of law, sit for the purpose of enforcing moral obligations or correcting unconscientious acts which are followed by no loss or damages.'"

I Story Eq. Jr., 203.

"It does not appear that the United States has been pecuniarily injured by the alleged fraud. No injury or damage is alleged, or in any way shown. The land was for sale to any duly authorized pre-emptor at $1.25 per acre. Defendant paid the full amount of the purchase money, and it went into the United States Treasury. The Government got all it would have obtained from any other party. It does not appear that anybody else had any rights or wanted to purchase, or that the United States was under any obligation to patent the land to any other person. There is no possible pecuniary injury to complainant. The most that can be said is that a principle of public policy was violated, and thereby a moral wrong resulted by reason of the legal disqualifications, under the pre-emption act, of defendant to purchase. But the wrong was only *malum probitum*, not *malum per se*. It is by no means clear that the demurrer ought not to be sustained on this ground,

but it is unnecessary to so decide now, for, in my judgment, it is not a case to be taken out of the rule established in the cases cited of Throckmorton and Vance. In view of the notorious liberality in favor of purchasers, not to say looseness, with which the pre-emption laws have, ever since their adoption, been administered all over the Western States, to relax the rules referred to in the authorities cited, especially where no actual pecuniary damage or injury has resulted, either to the government or private parties, and 'Retry every case in which' the action of the Land Office, as well as 'judgments or decrees rendered on false testimony given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterward ascertained to be forged or fraudulent,' would open a Pandora's box of evils 'far greater than any compensation arising from doing justice in individual cases.' It would open the door to any party, stimulated by malice or other unworthy motive, who could, upon *ex parte* and false statements, obtain the ear of the Attorney General to promote suits in the name of the United States, to the great vexation of honest, as well as dishonest, pre-emptors, and to the great detriment of the public peace and prosperity."

It is an important fact that this doctrine was applied in a suit brought by the Government directly against the patentee, who was the fraudulent party. If a bill in equity at the instance of the Government will not lie against the patentee to annul a patent because of false testimony and proofs in the pre-emption proceedings before the land officers *a fortiori*, it will not lie against a purchaser for value from the patentee without notice. This we have seen is true so far as such a purchaser is concerned; also on another ground—that discussed in the next preceding point of this brief. His position and title are impregnable. No matter what the frauds and perjuries of the patentee in the pre emption proceedings respecting the facts of settlement and residence on the lands may have been, the title of the *bona fide* purchaser is unassailable.

Whatever may be said of Moffat's title, it seems to me that Robert E. Carr, trustee, must be protected upon the ground of an innocent purchaser who purchased the undivided half of this property from Mr. Moffat, a man who has been prominently and favorably known in the State of Colorado for over twenty years, and then was, as he now is, the head of the largest banking institution in the State. Is this Court going to say that Mr. Carr loses his title to that land without a word of testimony charging him with any knowledge? Every allegation of the bill in relation to Mr. Carr was fully denied by him, and not a particle of testimony offered in support of the bill. It seems to me impossible for him to lose his title unless the Court should find the grantees were all fictitious and the Government had never parted with its title to the land, and if the patent is sustained as to the undivided half owned by Carr, it follows as a necessary consequence it must be held valid as to the other half owned by Moffat. If the title can be set aside and destroyed upon the allegations of the bill in regard to Carr's relations to this controversy, then the Government can set aside any patent and destroy any man's title because it is done by force of judicial decisions, without reason or law in its support.

Third Error—That the Court below erred in not decreeing defendant was an innocent purchaser for value, and as such was protected from the evil consequences flowing from the fraudulent method by which the patents were issued, if fraud was practiced in procuring these patents.

The bill avers that Moffat has whatever title passed from the government by the patents. It is a sound position to say that the government by its patents conveyed the fee simple title to the patentees or it conveyed nothing, and that Moffat now has such title or no title whatever. He was not required to plead he was an innocent purchaser for value, like a person who defended against an action brought by a *cestui qui trust* or the first grantee under an unrecorded

conveyance, because here there is no third party, it is the government upon the one side and one of its citizens upon the other, and the substantive allegations of the bill are that by the fraud of its agents, complainant was induced to issue a patent purporting to convey the fee simple title to a party not entitled to receive it, and that title, by mesne conveyances has become lodged in defendant Moffat, and by reason of such fraud it desires to have its conveyance canceled and annulled. The title is still in the government or else it is in Moffat. But the last amended bill contains no allegation charging Moffat with any knowledge whatsoever of the fraudulent practices by which said land was entered. The only allegations with reference to said Moffat are found on pages 30 and 31 of the record, and are to the effect that Moffat well knew of the supposed pre-emption of said land, and that it had been fraudulently obtained, and that the statements contained in said supposed proofs and certificates were false and fraudulent. Such allegation is not a traversable one of fraud. It is rather the conclusion of the pleader.

Story's Eq. Pl., Sec. 251, 251*a* and 252.

And if we turn to the allegations of the first amended bill found on pp. 6 and 7 of the record, for averments charging Moffat with fraud, they are to the effect that he, together with Stanton and Cook, procured some person to represent the patentees and made the entries, which is an express averment that the patents had real persons as patentees, acting under assumed names. But I suppose it is by the allegations of the last amended bill that Moffat's rights are to be determined. But if this Court should think that that allegation of fraud was sufficient, my reply is,

First—That all knowledge of fraud is denied by Moffat.

Second—That there is not a scintilla of testimony in the record, pointing to any fact or circumstance which tends to show Moffat acted in collusion with Stanton and Cook or

anyone connected with the fraud, and it matters but little what allegations are in the bill as long as they are denied in the answer and not supported by proof. And, further, I maintain that the fraud having been practiced on the Government by its register and receiver, complainant is bound by it, and it does not affect Moffat.

As this Court has stated in the case of the

United States *vs.* Throckmorton, 98 U. S., 64:

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents and even judgments. There is also no question that many rights, originally founded in fraud, become, by the lapse of time, by the difficulty of proving the fraud, and *by the protection which the law throws around rights once established by formal judicial proceedings in the tribunal established by law according to the methods of law, no longer open to inquiry in the usual and ordinary methods.*" That fraud spoken of in the bill is such that complainant has no right to reach it and undo what was consummated through it.

Moffat expressly avers in his answer, p. 35 of the record, that he purchased said land in good faith and in the belief that there was no question relating to the title thereto, and that all the proceedings relating to the title thereto were regular and in conformity with law. The bill avers (p. 30 of the record): "And your orator, confiding in the honesty of its said officers, Stanton and Cook, and believing the statements contained in its said proofs and certificates of location to be true, and that the persons existed who represented said fictitious names, and that he had a *bona fide* right to pre-empt the above described land, and being misled by the representations so made in said proofs and certificates, and relying entirely upon their truth, was induced to, and did, on the fourth of October, 1873, issue a patent for said land.

We here have an admission by complainant that the deception practiced upon it by its agents was successful, and that it was misled and deceived by them. With how much greater force will Moffat's assertion be received, that he relied upon what was represented upon paper by the agents of the Government, and invested his money on the strength thereof, and should he not now be protected? He again invokes the maxim when one of two innocent persons must suffer, the loss must be borne by that one who, by by his conduct, acts or omissions, has rendered the injury possible. And, where the equities are equal, the legal title must prevail. If defendant is an innocent purchaser, this decree is wrong, because his equities are at least equal to those of complainant, and he, holding the legal title, must succeed.

There is an allegation in the bill that Moffat purchased these lands after the certificate of entry had been issued by the register and receiver, and prior to the issuing of the patent, thereby intending to charge him with notice of the irregularity of the entry; such allegation is wholly insufficient for that purpose. It is a well-known fact that in the Western States many patents are never taken from the Land Office, the party holding the certificate of entry, having a title which can only be overcome by the patent itself, rests in security upon these certificates of entry, which are deemed evidences of a title in fee in the person making the entry.

The laws of Colorado, Section 1080 of Chapter XXXII, entitled "Evidence," provides:

1080. SEC. 3. The official certificate of any register or receiver of any land office of the United States, to any fact or matter on record in his office, shall be received and held competent to prove the fact as certified. The certificate of any such register of the entry or purchase of any tract of land within his district shall be deemed and taken to be evidence of title in the party who made such entry or purchase, or his heirs and assigns; but a patent for land shall be

deemed and considered a better legal and paramount title in the patentee, his heirs or assigns, than such register's certificate of entry and purchase of the same land.

The patent is not the title itself, but is simply the evidence of it, which is one grade higher as evidence than a certificate of entry.

In the case Gallipot *ex dem.* Bruner, plaintiff in error *vs.* Manlove *et als.*, defendants in error, I Scannon, (Ills.), 156, the Court say, after quoting the language of the Illinois statute, with which the Colorado Statute above quoted is identical, page 162: "From this section of that act, it is manifest that the register's certificate is raised to as high a character in point of evidence, in the present form of action (which was ejectment), as a patent possibly could be. Its effect is to be the same, and the rights derived from it for the purpose of recovering or maintaining possession of lands described in it, are co-extensive with the most formal, regularly issued patent. These certificates not only vest the title acquired by purchase from the Government in the purchaser, for the purposes named, but make that title transmissable to the heirs or to the assignee."

And this court, in the case of Witherspoon *vs.* Duncan, 4 Wallace, 210, at page 218, says: "In no just sense can lands be said to be public lands after they have been entered at the land office and a certificate of entry obtained. If public lands before the entry, after it they are private property. If subject to sale, the government has no power to revoke the entry and withhold the patent. A second sale, if the first was authorized by law, confers no right on the buyer and is a void act."

No bad faith can be imputed to Moffat by purchasing the land after it had been entered and the government had received its pay for it.

Fourth Error—No offer is made in the bill to return the scrip or money received for the land. This is inequitable and the decree is wrong and should be reversed for want of equity in the bill.

When the government goes into a Court of justice it is to be treated like any other litigant, and its rights with few exceptions are governed by the same rules of law that pertain to citizens.

> The Siren, 7 Wallace, 152.
> Floyd Acceptances, 7 Wallace, 666.
> Brent *vs.* The Bank of Washington, 10 Peters, 596.

At 615 this Court declares: "There is no reason why the United States should be exempt from the fundamental rules of equity subject to which its Courts administer their remedy. If it is compelled to come into a court of equity to enforce a legal right, the United States must come as other suitors seeking in the administration of the law of equity, relief, etc."

It is not sufficient answer to say that under the allegations of the bill the money was paid by Stanton or Cook, and the grantees were fictitious, and the government did not know to whom it should refund it. If it be true that Moffat was a party to the fraud and furnished the money, it is properly paid to him. If he is an innocent purchaser, and those parties were fictitious, that which the government received by means of the fraud should be returned to Moffat to compensate him in part for the wrong the government does him in taking away his title.

Upon this point the case of the United States *vs.* White, 17 Federal Reporter, 565, is in point. The learned Judge says:

"The money received is retained and no tender appears to have been made, nor is any offer to refund the money made in the bill. The United States, like an individual

when it comes into court and demands equity, must do equity, or at least offer to do equity. * * * * It cannot keep the money and in a Court of Equity demand and receive a return of the land. To meet this point, and as a basis for a decree for forfeiture of the money as a part of the relief demanded in the bill, the United States Attorney relies on Section 2262, Rev. Stat., which provides that 'if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same.' This is highly penal, and the only remedy, or rather punishment, other than an indictment for perjury, that appears to be provided by law for the wrong sought to be redressed. But the United States has come into the wrong forum to enforce this penalty. It is a universal rule in equity never to enforce a penalty or a forfeiture.'"

2 Story Eq. Jr. Sec. 1319, 1494, 1509.

For the foregoing reasons I submit the decree is wrong and should be reversed.

Respectfully submitted,

L. C. ROCKWELL,

Attorney for Appellant.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1884.

No. 6

DAVID H. MOFFAT, JR.,
Appellant.

vs.

THE UNITED STATES,
Appellee.

Appeal from the Circuit Court of the United States for the District of Colorado.

Brief and Argument for Appellant,

BY

L. C. ROCKWELL,
His Attorney.

COLLIER & CLEAVELAND, LITHOGRAPHERS AND JOB PRINTERS.

Supreme Court of the United States,

OCTOBER TERM, 1884.

DAVID H. MOFFAT, JR., *and*
ROBERT E. CARR, *Trustee*,
Appellants,
vs.
THE UNITED STATES,
Appellee.

Appeal from the Circuit Court of the United States for the District of Colorado.

This action was instituted on the third day of June, 1874, by the United States against Irving W. Stanton, Charles A. Cook, David H. Moffat, Jr., Robert E. Carr, trustee, Philip Quinlan, Henry H. Perry, Michael Quinlan, and Orvin R. Peaseley, in the Third Judicial District in the late Territory of Colorado, to compel the cancellation of a patent issued by complainant on October 4, 1873, to Philip Quinlan, for 160 acres of land, situate in Bent County, Colorado, and to annul certain mesne conveyances whereby the title to the same was transferred from Philip Quinlan to Henry H. Perry, on the twelfth day of May, 1873, and by said Perry conveyed to said Moffat on the twenty-third day of June, 1873, and an undivided half thereof conveyed by said David H. Moffat, Jr., to Robert E. Carr, trustee, on the fifteenth day of September, 1873.

Upon the admission of Colorado into the Union in 1876, this action was transferred to the Circuit Court of the United States for the District of Colorado, and there prosecuted to final judgment and a decree rendered cancelling said patent and all of said deeds.

Upon July 17, 1875, the bill was dismissed as to Philip Quinlan, Henry H. Perry, Michael Quinlan and Orvin R. Peaseley, and on January 25, 1877, the bill was further dismissed as to Stanton and Cook. The first amended bill was filed in July, 1875, and avers that the complainant was the absolute owner of 162 acres of land, lots one and two, in the North half of the southeast quarter, township twenty-three, South of range fifty-two, West, in Bent County, in the then Territory of Colorado, which land is subject to the right of pre-emption under the provision of the Act of Congress entitled "An Act appropriating the proceeds of the sale of public lands and to grant pre-emption rights, approved September 4, 1841;" that a patent was fraudulently obtained from complainant and inadvertently and by mistake issued to Philip Quinlan after the filing by him of a declaratory statement in the Land Office at Pueblo, upon proof of his right of pre-emption, purporting to have been made by said Quinlan and filed in the Land Office on May 8, 1873, which proof of the right of pre-emption set forth that Philip Quinlan appeared before Irving W. Stanton, the then register of the Land Office at Pueblo, Colorado, on the eighth day of May, 1873, and swore and subscribed to an affidavit that he had made settlement upon and improved said land in good faith, and had appropriated it to his exclusive use and benefit, and that he had not, directly or indirectly, made any agreement with any person by which the title he might acquire from complainant would inure to the benefit of any person other than himself. Said proof of the right of pre-emption further set forth that Michael Quinlan and Orvin R. Peaseley appeared on the same day before said Stanton, then register, and swore that Philip Quinlan was then an inhabitant of said land; that no other

person resided upon it; that he entered upon the same and made settlement in person on the fifth of May, 1872; that he had built a house and made other improvements thereon; that he lived in said house and made it his exclusive home from the fifteenth of May, 1872, to the date of making said affidavit, whereas, in truth and in fact, no settlement or improvement whatever was then or ever had been made by said Quinlan upon said land; that said allegations contained in said oaths were false, fictitious and fraudulent, by means of which complainant was misinformed, mislead and defrauded; that said Irving W. Stanton, as the register, and said Charles A. Cook, as the receiver of public moneys for the district of lands subject to sale at Pueblo, Colorado, did, on the eighth day of May, 1873, certify on paper that said Michael Quinlan and Orvin R. Peaseley were persons of respectability, without their having any personal or official knowledge of either of them; that said patent was issued by complainant inadvertently and by mistake to a fictitious person by means of false and fraudulent representations, so as aforesaid set forth in the declaratory statement and said proof of right of pre-emption, when, in fact, no such person as Phillip Quinlan ever had any existence; that said Phillip Quinlan conveyed said land to one Henry H. Perry, on the twelfth day of May, 1873, and said Perry conveyed said tract to David H. Moffat on the twenty-third day of June, 1873, and said Moffat transferred and conveyed an undivided one-half interest therein to Robert E. Carr, trustee, on the fifteenth day of September, 1873, and that the title thus conveyed by said parties was the title complainant conveyed to said Quinlan, which conveyances were made prior to the granting of said patent; that all of said parties had full knowledge of the frauds committed in obtaining the same, and made their purchases with a full knowledge on their part of the fraudulent practices in procuring the said patent. Then follows the prayer that said patent may be cancelled, and that the respective conveyances may be annulled and for naught held.

To that bill Moffat, Carr, Stanton and Cook demurred. No decision appears to have been made upon the same.

Afterwards, and on the seventeenth day of February, 1877, Moffat filed his answer to said complaint, in which he denied that complainant, since the sixteenth day of May, 1873, was the owner of the land described, or that the same since that time was open to pre-emption; but admits that it was open to pre-emption prior to the above named date.

On information and belief denies that any person appeared before Stanton, the register of the land office, on the eighth day of May, 1875, and personated Phillip Quinlan, and made and filed in his name a declaratory statement; but on the contrary, avers that Phillip Quinlan appeared and was not a ficticious or unreal person, and denies that the false and fraudulent affidavits were made as to Quinlan's right to pre-emption and his occupancy and settlement on said land, and says he is a stranger to all the matters and things stated in said declaratory statement, as well as in the affidavits in support thereof; has no knowledge except as he is informed by and in said bill, and leaves the plaintiff to make such proof of said allegations as it may be able, but believes the contrary of said allegations to be true.

Denies that he and said Irving W. Stanton and Charles A. Cook, or either of them, or any other person, on the twelfth day of May, 1873, procured a person to personate the said Quinlan, and make and execute a deed in his name to one Henry H. Perry.

Denies that upon the twenty-third day of June, 1873, or at any other time, the said Stanton and Cook, or any of them, procured or induced any person to represent the said Henry H. Perry, or in his name, make and execute a deed

of conveyance to this defendant; but, to the best of his knowledge, information and belief, he believes the said conveyances were made and executed by real persons, by the respective names as grantors who purported to have executed the same.

Admits that he did, upon the fifteenth day of September, 1873, make and execute a deed of conveyance of an undivided interest in said land to Robert E. Carr, trustee, as co-defendant; admits that the said several conveyances were each made before the issuance of the patent.

Denies that at the time of said conveyance, or at any time, he had any knowledge of fraud or any alleged fraud relative to the procuring of the title to said lands; but avers that he purchased the said land in good faith, and believed that there was no question in relation to the title thereto, and that all proceedings relative to the pre-emption thereof were regular and in conformity with the law, and craves the same benefit of his answer as if he had demurred to said bill, which answer was put in under oath.

Stanton and Cook also filed their answer to said amended bill, denying all the material allegations thereof.

And afterwards, and upon the seventeenth day of February, 1877, complainant filed a second amended bill of complaint against Moffat and Carr, in which he averred that upon the first day of May, 1873, he was the owner in fee of lots one (1) and two (2) in the North half of the South-east quarter, No. 3, township twenty-three, South of range fifty-two, West, and was subject to the right of pre-emption by virtue of the acts of congress. That at that time and for a long time prior thereto, Irving W. Stanton was the register, and Charles A. Cook was the receiver of public money of complainant's land office, at Pueblo, Colorado; that while

so acting and holding said offices they conspired and confederated with each other to cheat and defraud complainant out of his patent for said land upon the pretext that the same was due to some person who had performed all the duties required of him by the acts of congress in that behalf, and wrote out in a form required by law a declaratory statement in the fictitious name of Philip Quinlan, by which statement it was represented that said fictitious person had declared his intention to claim said lands as a pre emptor, and the said Cook and Stanton also wrote out, signed and executed, in the name of supposed persons, other papers constituting the proof of pre-emption, required by the acts of Congress and the rules and regulations of the General Land Office, which papers purported to have been sworn to before Irving W. Stanton, as register, by said fictitious persons, wherein it was averred that such persons had improved the said land in good faith to appropriate it to his exclusive use and benefit; that he made no agreement with any person or in any manner whereby the title he might acquire was to inure to the benefit of anybody else other than himself. That said affidavit, purported to have been sworn to before said Stanton, was signed by Michael Quinlan and Orion R. Peaseley, which affidavits were written by said Cook and said Stanton, wherein such affidavits alleged that said Philip Quinlan was a single man and an inhabitant of said land, and that no other person resided thereon; that said Quinlan had made a settlement upon the same, and had lived there since the first of May, 1872; that he built the house and made other improvements on said land, and had plowed, fenced and cultivated eighteen acres of the same. That at this time Cook was the owner of a certain amount of Agricultural College Scrip, issued by the State of Florida, and, for the purpose of locating said land with said Scrip, in the name of said Quinlan, the said Stanton and Cook inserted, or caused to be inserted, in a blank endorsement, said fictitious name of Philip Quinlan, and certified that said Philip Quinlan was a real person, and had appeared before them and made the proofs required by law

as a pre-emptor, and had actually sworn to said statement before said Stanton, as register. That said Stanton and Cook, by color of their said office, forwarded said declaratory statement and affidavits and Agricultural College Scrip to the General Land Office at Washington, and induced complainant to issue its patent for said land upon the strength of those papers, and complainant, confiding in the honesty and integrity of said Stanton and Cook, issued said patent.

Avers that no person by the name of Quinlan settled upon said land, and no person appeared or presented himself before said Cook and Stanton at any time and made any declaratory statement or proof of pre-emption either as pre-emptor or witness; believes said papers were made by said Cook and Stanton for the purpose of fraudulently depriving complainant of his title to said land and vest the same in the defendant, Moffat; that Moffat now has said title and claims to be the owner of said land by virtue of certain mesne conveyances from the patentee to himself, and that Moffat well knew of the supposed pre-emption of said land, and that it had been fraudulently made, and the statement contained in the said proof and certificates were false and fraudulent; that Moffat now holds the deed for said land from Philip Quinlan through Henry H. Perry, dated June 23, 1883; that said Moffat caused said patent to be recorded in the office of the clerk and recorder for Bent County, Colorado, and that the same is a cloud on the title of complainant and prevents the improvement thereof under the Act of Congress; and that on the fifteenth day of September, 1883, said Moffat made and executed a certain deed and acknowledged the same, conveying an undivided half of said property to Robert E. Carr, as trustee, which deed is recorded on the office of the clerk and recorder of Bent County, Colorado; avers that no good or valuable consideration moved from said Carr to said Moffat, and that said conveyance was fraudulent and without lawful consid-

eration, and that Carr, at the time of said conveyance, had notice and was fully informed of the supposed pre-emption of said land, that it had been fraudulently made, and that said statements contained in said proof of pre-emption were false and fraudulent.

Wherefore complainant prays that said patent may be set aside and declared void; and delivered up to be cancelled, and that the deed from Philip Quinlan to Henry H. Perry, and from Perry to Moffat, and from Moffat to Carr, be also declared void, and for naught held.

Upon the seventeenth day of February, 1877, Moffat and Carr filed their joint and several answer to the second amended bill, in which they admit that before the eighth day of May, 1873, complainant was the owner of the ground in question; deny it has had any interest in said land since that date; deny that said ground since that time has been open to pre-emption; they admit that Stanton and Cook were the Register and Receiver of the Land Office at Pueblo on the day and date last aforesaid; but deny that while they were holding said respective offices they conspired and confederated with each other with intent to wrong or defraud complainant out of the land in question; admit that upon the eighth day of May, 1873, a declaratory statement was made out in the name of Quinlan, and signed by him, as they believe, wherein said Quinlan declared his intention to claim and hold said land as a pre-emptor; deny that the name Philip Quinlan signed to said statement was fictitious, and aver that it was the real name of the pre emptor, Quinlan; they also admit that at the time of making said declaratory statement another paper, costituting the proof of pre-emption, was made out and sworn to before said Stanton, as the Register, wherein it was said that said Quinlan had improved said land and appropriated it to his exclusive use, and that said paper stated all things necessary and requisite under the law to

show said Quinlan had complied therewith; deny that said paper was executed in the name of fictitious persons, and aver that said proof of pre-emption was signed by real individuals and not in the name of fictitious ones; that whether said Cook, at the time said pre-emption was made, was possessed of Agricultural Scrip issued by the State of Florida, defendants have no information, knowledge or belief, except as advised by complainant's bill, and that said land was pre-empted by a real individual, and not by said Cook and Stanton, as alleged in said bill; and that said pre-emptor and his witnesses were not fictitious but real persons, and that they actually appeared before said Register and Receiver and made and subscribed the oaths as stated in said papers. Deny that on the sixteenth day of June, 1873, or at any other time, Jerome B. Chaffee, as the agent of the defendants, or either of them, appeared before the Land Office and presented the duplicate certificate of entry, and requested said office to cause a patent to issue from complainant to the persons named in said certificates of entry; admit a patent was issued on the fourth day of October, 1873, as averred in the bill, but deny said patents were issued to fictitious persons; deny that any of the proceedings relating to the pre-emption of said land were false and fraudulent; deny that such papers were signed and executed and the patents delivered to fictitious persons; admit that they claim to own and hold said land by virtue of the title evidenced by said patent; deny that they received a duplicate certificate of pre-emption from said Cook; deny that they ever had any knowledge or information regarding any fraudulent practices in the entry of said land or in the issuing of said patent, or that the statements contained in said proof of pre-emption were false or fraudulent; deny all knowledge of fraud relating to the procuring of the title to said land, and aver they purchased said land in good faith and in the belief that there was no question relating to the title thereto, and that all the proceedings relating to the title thereof were regular and in conformity with law; admit the conveyance from Quinlan to Perry, and from Perry to

Moffat, but deny that said gaantor or said grantee, or either of them, were unreal or fictitious persons, but on the contrary, aver the fact to be that said persons were real ones, and the execution of said deed was real and genuine, and executed in the true names of the grantor and grantee; they admit that on the fifteenth day of September, 1873, Moffat conveyed the undivided half of said property to Robert E. Carr, as trustee, which deed is recorded as set forth in said complaint; aver that said conveyance was made to Carr in trust for certain associates who were interested with him in obtaining the title to said land, and aver a good and valuable consideration moved from Carr to said Moffat for said deed; deny that said Carr had any notice, knowledge, information or belief that said land had been fraudulently pre-empted, or that the statements contained in said proof of pre-emption were false or fraudulent, and aver on information and belief that said proofs of pre-emption were genuine and *bona fide* and without fraud as against the rights of the complainant, or any one else; deny all unlawful combination or confederation with which they stand charged in the bill.

And afterward, and upon the nineteenth day of February, 1877, a replication was filed to said respective answers.

With this case was consolidated eight others (p. 51 of the record) known as numbers 14, 15, 17, 22, 23, 28, 31 and 34, brought by complainant against the same defendants to cancel the patents to eight other pieces of land, which consolidated case was known as No. 14, these other cases involved precisely the same questions, and the respective bills contain substantially the same allegations. The consolidation of so many cases involves the title to over 4,129 acres of land, the patents to which were sought to be cancelled by this proceeding.

The grounds upon which the patents and deeds are attacked are

First—That Irving W. Stanton, as the register, and Charles W. Cook as the receiver of public moneys at the Land Office at Pueblo, Colorado, while they were holding said respective offices and discharging the duties pertaining thereto, combined and conspired together to wrong and defraud the Government, and to cause a large amount of land to be entered in the name of mythical and fictitious person, or persons, under an assumed name, representing some fictitious and mythical individuals, and the affidavits and proofs of pre-emption, settlement and improvement, by which the pre-emption purported to have been established, were likewise fictitious and mythical individuals, and all such papers were made out by said Stanton and Cook, or by their direction, and the witnesses under assumed names swore to such proofs of pre-emption, settlement and improvement.

Second—That the allegations of settlement and improvement upon the several tracts of land, so entered and patented as stated and set forth in the several final proofs and affidavits upon which said patents were issued, were each and all of them false and fraudulent, and no settlement or improvement whatever was ever made upon any of said lands by any of said alleged pre-emptors.

Third—And that the deeds whereby the title was conveyed to Moffat, were executed by men assuming a fictitious name, and the supposed title obtained from the Government under the patent was, by the use of such fictitious names and fraudulent practices, transmitted and lodged in said Moffat, who sold and conveyed the undivided half of the land to Robert E. Carr, trustee, who purchased with notice of the fraud.

The case was submitted upon oral testimony in open court and upon depositions, and the Court found the issues in favor of the complainant and decreed the cancellation of all the patents and annulled the same, and also decreed the several mense conveyances whereby the purported title under the patent was conveyed to Moffat, and from him to Carr, trustee, to be void and of no effect, and adjudged defendants to pay the costs. From which decree this appeal is prosecuted.

The errors assigned and upon which I propose to discuss this case are as follows:

First Error—That the Court was not authorized from the testimony to find that the respective patentees were fictitious persons, against the presumption flowing from the issuing of the patent and the several certificates issued by the register and receiver, certifying that a pre-emption had been made in conformity with law and the regulations of the Land Department, and the proper settlements and improvements had been made upon the land by a person authorized to make the pre-emption. That in this respect the decree was not warranted by the evidence.

Second Error—That inasmuch as all the fraud charged in the bill was committed by Stanton, as the register, and Cook, as the receiver of public moneys of the United States Land Office at Pueblo, the Court erred in not giving the patent the force and effect of a good and valid conveyance as against Moffat and Carr, and not holding that the government was bound by what the register and receiver certified was done in pre-empting the land and in making proof of settlement thereon as against Moffat and Carr, and in visiting the wrongful acts and practices of the register and receiver in entering this land upon defendants and not upon

the government, and decreeing the land was never entered or that the patentees never actually existed.

Third Error—That the Court below erred in not decreeing defendants, and especially Carr, were innocent purchasers for value and as such were protected from the evil consequences flowing from the fraudulent method by which the patents were issued, if fraud was practiced in procuring these patents.

Fourth Error—No offer is made in the bill to return the scrip or money received for the land; this is inequitable and the decree is wrong, and should be reversed for want of equity in the bill.

Argument.

First Error—That the Court was not authorized from the testimony to find that the respective patentees were fictitious persons against the presumption flowing from the issuing of the patent, and the several certificates issued by the register and receiver certifying that a pre-emption had been made in conformity with law and the regulations of the Land Department, and the proper settlements and improvements had been made upon the land by a person authorized to make the pre-emption. That in this respect the decree was not warranted by the evidence.

The discussion of these questions require a reference to Sections 2259, 2262, and 2463, R. S. U. S., p. 415, which sections are as follows:

SEC. 2259. Every person, being the head of a family, or widow, or single person, over the age of twenty-one years, and a citizen of the United States, or having filed a declaration of intention to become such, as required by the naturalization laws, who has made, or who hereafter makes, a settlement in person on the public lands subject to pre-emption, and who inhabits and improves the same, and who has erected or shall erect a dwelling thereon, is authorized to enter with the register of the Land Office for the district in which such land lies, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land.

SEC. 2262. Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the register or receiver of the land district in which the land is situated that he has never had the benefit of any right of pre-emption under section twenty-two hundred and fifty-nine; that he is not the owner of three hundred and twenty acres of land in any State or Territory; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself; and if any person taking such oath swears falsely in

the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of *bona fide* purchasers, for a valuable consideration, shall be null and void, except, as provided in section twenty-two hundred and eighty-eight. And it shall be the duty of the officer administering such oath to file a certificate thereof in the Public Land Office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

SEC. 2263. Prior to any entries being made under and by virtue of the provisions of sections twenty-two hundred and fifty-nine, proof of the settlement and improvement thereby required shall be made to the satisfaction of the register and receiver of the land district in which such lands lie, agreeably to such rules as may be prescribed by the Secretary of the Interior; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

It is conceded it is necessary to the validity of a patent to have a grantee *in esse* to receive the title, but I contend that, under the first amended bill, complainant's allegations show there was a grantee, because it is expressly averred that some person appeared under an assumed name and represented Eli Turner, and made proof of settlement and pre-emption as such, and had witnesses who proved his identity. Under the amended bill it is averred that Eli Turner was a fictitious person, but it is not averred that some individual did not appear and represent himself to the register and receiver as Eli Turner. If there is any state of facts under which the Court can presume the patent to have been lawfully issued, it will presume those facts existed.

The complainant produced witnesses by the name of Van Horn, Boggs, Cahil, Vandiver, Woodworth, Beck, Carpenter, Bowman, Carroll, Boomer and Hill—eleven in all—who testified they were residents of Las Animas County; that they were well acquainted with the land in question; that no improvements were put upon the lands by the persons named as the patentees. To that extent their testimony is reliable, and establishes the fact that no

improvements or settlements were made upon the land such as the pre emption papers stated. They also severally testify that they did not know Eli Turner, Thomas Harris, Simeon D. Porter, Anson Beck, James C. Hall or Samuel A. Long, nor any of the respective grantees or witnesses used in making proof of settlement and cultivation by the respective pre-emptors. From this testimony the presumption arises that men bearing those names did not live upon the land, but fails to establish the fact that some persons did not appear before the register and receiver and assume to represent Simeon D. Porter and the other patentees, and make the necessary proof of pre-emption and settlement. The presumption of law is that the register and receiver did their duty in the premises. Irving W. Stanton, the register, and Charles A. Cook, the receiver, stated and certified (page 102 of the record),

That Simeon D. Porter did, upon the sixteenth day of May, A. D. 1873, locate upon lots one and two of section six, and the North half of the North-east quarter of section seven, township twenty-three, South of range fifty-two, West, being 160 acres, and Charles A. Cook, the receiver of the Land Office, stated and certified,

That on May 16, 1873, he received from Simeon D. Porter, of Bent County, Colorado, the sum of $11.60, being in full for 8 85-100 acres of lots one and two in section six, and the North half of the North-east quarter of section seven, township twenty-three, South of range fifty-two, West, being the excess in said tract over the area located in virtue of Agricultural College Scrip Certificate No. 176, State of Florida (pages 102 and 103 of the record); and said Stanton further certifies,

That said Potrer, upon the day and date last aforesaid, before him, subscribed and swore to a certain affidavit, alleging the non-mineral character of the land located, which verification was taken by said Stanton as register of the United States Land Office. And upon the same

day, viz: May 16, 1873, both Stanton and Cook, as the Register and Receiver, further certify as follows:

LAND OFFICE, PUEBLO, COLORADO, }
May, 16th, 1873. }

We hereby certify that the attached Scrip No. 176, State of Florida, was on this day received at this office from Simeon D. Porter, of Bent County, Territory of Colorado.

IRVING W. STANTON, *Register.*
CHARLES A. COOK, *Receiver.*

And that said Porter did upon the same day locate said lots one and two in section six, and the North half of the North-east one-fourth of section seven, township twenty three, South of range fifty-two West, 160 85–100 acres of land, in satisfaction of the attached Scrip No. 176 of the State of Florida. And they further certify as follows:

LAND OFFICE, PUEBLO, COLORADO, }
May 16th, 1873. }

We hereby certify the above location is correct, being in accordance with law and instructions.

(Signed) IRVING W. STANTON, *Register.*
CHARLES A. COOK, *Receiver.*

The register and receiver made similar certificates, excepting as to the names of the pre-emptors and the description of the land, to each and every pre-emption.

Nothing whatever was said by any witness regarding the alleged irregularities of the Land Office. In that respect the allegations of the bill were wholly and entirely unsupported by proof, except the testimony of some experts who testified that nearly all the pre-emption papers and proofs of pre-emption seemed to have been made out and written by one person, named Williams, an employe or attache of said Land Office. Complainant put Cook, the receiver, on the stand, but failed to ask him any questions regarding any allegations of the complaint as to the fraudulent operations practised by himself and Stanton in the making of these entries. If the theory upon which the bill was drawn be

the true one, Stanton and Cook knew more about these fraudulent entries than any other persons, and complainant had it in its power to put these men upon the stand and ask them about it. Had they refused to answer any proper question as to the alleged fraudulent notices, then some presumption might have arisen that the allegations of the bill were true, and that they would not criminate themselves by answering, but nothing of the kind was attempted. It is a presumption of law that when a party has proof and will not offer it, that it was suppressed because it would militate against his case. The court below should not have presumed Cook and Stanton committed the frauds charged against them, but should have required some proof other than what was produced upon that point. Complainant had it in its power to investigate by asking the register and receiver if they perpetrated the fraud, or if they knew who did it. The only reason why the interrogatories attached to the bill were not answered, was that, under the law, these parties were witnesses and were compelled to answer, except as to matters which would criminate themselves, and it was for the witnesses alone to claim that exemption. In that respect complainant's case is strikingly weak. And where the patent is supplemented with the papers showing the regularity of the proceedings in making the entry in the Land Office, I submit, the decree in that respect was unsupported by the evidence, and the Court should not have found these respective grantees were fictitious persons; and, too, it did not appear but what persons assuming to represent the respective patentees appeared and made the entries and the proofs of settlement and improvements upon the land. Such was the natural presumption arising from the several papers offered regarding the pre-emption of each piece of land. Fraudulent proof of pre-emption and a real pre-emptor may co-exist. If a person assuming to be a settler should make out his proof of pre-emption by filling out the necessary affidavits in the names of imaginary persons, and by that means obtain a certificate of entry by means of which a patent issued, it would not be ques-

tioned but that the patent ran to a real grantee, notwithstanding the fraud; therefore, in this question as to whether there were real grantees, the alleged frauds connected with the proofs of pre-emption have no bearing.

The presumption of an actual grantee from the patent itself must be overcome by proof. It will not be disputed that the pretense the patentees were fictitious, falls to the ground if the facts were, that they were actual parties though non-residents of Bent County and the State of Colorado, and by means of false names caused the entries to be made. Upon this point the case of Thomas vs. Wyatt, 31 Mo. 188, is an authority in point.

In that case two patents for the same piece of land were concerned, one running to the assignee of a certificate of entry issued to Samuel Johnson, the patent being dated on the fifth day of January, 1843, the other, a patent issued to Samuel S. Coleman, as assignee of Samuel Johnson, dated March 14, 1845. The case turned on whether James Coleman and Samuel Johnson were the same identical person —the name, Samuel Johnson, being assumed by Coleman to carry out certain fraudulent designs. As the court puts it:

"This case, then, depends on facts to be determined by a jury. These facts are, whether James Coleman and Samuel Johnson were not the same identical person, and the name Samuel Johnson was assumed by Coleman to carry out his fraudulent designs. If these facts are found, the plaintiff will be entitled to recover. If, on the other hand, the jury believe from the evidence that the Government in issuing the patents intended them for another person distant and separate from James Coleman, and that there was *no* such person ever in existence, then, in the nature of things, no title can pass by the patent."

The Court stated the law bearing on this subject in the following language:

"The only theory that will solve the question involved in this litigation (and we think there is sufficient evidence to put it to a jury) is, that Samuel Johnson is an assumed name of James Coleman and not a fictitious person. If we regard Coleman as usurping the name of Johnson when it suited his purposes, we have a clue by which we may be guided to the justice of this case. We have no doubt that this was the light in which this matter was viewed in the Court below, but as the case was tried by a jury we do not conceive that the language of the instruction was sufficiently pointed to direct their attention to the matter really in issue. If James Coleman used the name of Samuel Johnson to designate himself, when he thought proper, and made the entry in the name of Samuel Johnson for himself, merely using that name as he would the one by which he was usually known, and endorsed it in the name of Samuel Johnson with the same view, then the transaction is to be regarded as though James Coleman had used instead of the name 'Samuel Johnson' the name 'James Coleman.'"

I submit this authority as a sensible and reasonable one, which should be followed, and, if followed, it determines the present question. There can be no doubt that the doctrine it lays down is sound law.

The Court has to decide a question of fact as well as a question of law. Has it before it proof enough to allow it to overturn the presumption, flowing from the patent itself, that an actual grantee existed, and to hold that it was intended to issue the certificate of entry and patent to purely fictitious persons, and not to parties who applied for them and obtained them, no matter through what fraudulent means? Supposing that a party one day makes proof of settlement, etc., in his own name, and obtains a certificate to a certain quarter section. A month afterward he presents himself under an assumed name, makes proof of settlement on another quarter section, and obtains another certificate of entry. Would there not be an actual grantee in each case—namely: the same party—so that the grant in each

would be an operative one except as it might be subject to annullment on account of the fraud? The difference between such a case and that where there is a fictitious grantee is obvious. The distinction is between a fraudulent and a fictitious grantee. To maintain the position that a grantee was fictitious it is necessary to establish that there was no party or person in existence who assumed to be a settler. Proof of fraudulent settlements by a number of different persons destroys the claim and theory of fictitious grantees; a fraudulent grantee cannot be a fictitious grantee.

It is quite consistent with the proofs that certain parties did actually present themselves at the Land Office at Pueblo, and make the proofs which formally entitled them to certificates of entry. That being so, the certificates and patents issued upon them are not void for want of a grantee, whatever the fraud may have been. To find that all the proceedings were a fiction, and that no parties presented themselves as actual settlers, under real or assumed names, is to strain the proofs beyond their natural and reasonable import, and, in straining them, to overthrow the presumption flowing from the patents, to the destruction of the rights of the *bona fide* purchasers.

I think this will very clearly appear from a full examination of the testimony.

The bill alleges the parties to the conspiracy through which the patents were obtained were the Register and Receiver of the Land Office. This it was necessary to allege to maintain the complainant's position that the pre-emptors were fictitious. Certificates of entry running to fictitious persons could not have been issued without the co-operation of the land officers—as, if there were no persons at all representing the pre-emptors, these officers must have known it. They could not have honestly certified that persons appeared before them as pre-emptors and witnesses if no such persons appeared. It would be impossible to carry out a scheme of pre-emption in the names of

fictitious people without these officers being aware of it and aiding it. Actual persons might appear at the Land Office and, through false proofs of pre-emption, deceive the officers and enter the lands, but in such a case it could not be claimed that the grantees were fictitious, whether they assumed false names or not. The complainant could not have presented that as the true situation, for it would have been an admission that there were actual grantees. Therefore, to maintain its ground that the pre-emptors were fictitious, it has been driven to the position that the land officers were active parties in the fraudulent conspiracy.

Has it proved this in any sufficient way?

The presumption which attends the official action of all public officers is that they have done their duty. That presumption must be taken account of as a factor in this case. It rests upon the complainant to overcome it; and this can only be done by evidence which is convincing and to the point.

There is no direct testimony implicating the register or receiver.

No party who had any personal knowledge of any of the facts attending the pre-emption of these lands appeared as a witness. The Government did not call a single witness who was concerned in their pre-emption. It has not attempted to show to the Court what fraudulent methods were used to obtain their pre-emption, if any fraudulent methods were used. The Government rests its entire case on inferences; and the only facts it has sought to prove as a basis for the inferences which it would have the Courts draw are, that no parties resided in Bent County bearing the names of the pre-emptors.

Can the Court fairly find from those facts that the register and receiver were guilty of the criminal malfeasance with which they are charged, or even of negligence? Assuming the fact to be that there were no persons of that

name residing in Bent County—and the inference is more probable that the pre-emptors were persons residing in the vicinity who assumed false names, or that they were non-residents, than the inference that the register and receiver, with one or more other parties, made the false proofs of pre-emption, and issued the certificates of entry to fictitious persons—requiring, as this last inference does, the most deliberate and criminal malfeasance on the part of public officials. If the way in which these lands were pre-empted was the making of false proofs of pre-emption by residents of Bent County, who assumed false names, or by non-residents using their own names, precisely the same proof could be made by the Government that it has made, and yet the register and receiver be innocent of any wrong, and actual grantees exist.

It is to be observed that the land officers residing and having their office at Pueblo, could not be expected to be acquainted with the inhabitancy of the particular quarter sections of the pre-emptible lands in that county. So far as the inhabitants of the county were concerned, their knowledge must necessarily have been very slight, as the region where these lands are situated is a hundred miles distant from Pueblo, and there was no railroad South of Pueblo. Personal investigation on the spot or personal knowledge of the facts entitling a person to enter lands was not required of these officials. These being the facts, it is obvious that residents of Bent County, assuming false names, or non-residents claiming to be residents of that County, might appear before the register and receiver and make the necessary proofs of pre-emption and obtain certificates of entry without the slightest fraud or negligence on the part of those officers. How, then, can the Court find from the bare facts that there were no persons of the names of the pre-emptors residing in Bent County that the register and receiver were guilty of the frauds charged upon them? What would be the situation if those officials were on trial for the criminal malfeasance with which they are

charged, and the proofs were precisely the same as they are in this case? Would the Court be warranted in submitting the question to the jury? Would it not rather be compelled, from the proofs, to direct an acquittal on the ground that there was no substantial evidence from which the jury could find that those officers were guilty of the malfeasance charged against them?

The issue in this case is not distinguishable from that. The case, so far as this point is concerned, turns on the question whether those public officers were guilty as charged in the bill, or not.

The testimony, even of the witnesses for the Government, tended to show there must at least have been some twenty persons engaged in making the proofs of pre-emption. That evidence we regard as most significant. In the first place the secrets of such a conspiracy as is alleged in the bill could not have been so preserved that the government could give no direct testimony of its existence if there had been twenty persons engaged in it. Again, had the land officers engaged in any such conspiracy as is charged, it would have been the heighth of folly and stupidity to employ twenty persons in its consummation when none were necessary. Again, from the appearance of so many persons connected with the pre-emption of the lands, the natural conclusion is directly in favor of my contention in this brief —that there were actual persons who presented themselves at the land office, and obtained certificates of entry running to them. And if it should appear as the result of this testimony that at least twenty persons were concerned in making these proofs, and probably more, then I submit the conclusion is irrestibly that the patentees were not fictitious.

I repeat that the inference to be drawn from this testimony is that Stanton and Cook were not engaged in the conspiracy charged, or in any fraudulent scheme for the entry of these lands. In that event there must necessarily have been patentees, because in each and every case of pre-

emption, the register or receiver has certified under his own hand that the pre-emptor appeared before him in person; that he appeared to be a reputable person, and that he was sworn to the truth of the facts stated in the affidavit before him. In each and every case, too, the register or receiver has certified that a certain witness, knowing the facts necessary to entry, appeared before him in person, and was sworn to the truth of the facts necessary to qualify the pre-emptor for his certificate. If these certificates were true, then, in fact, an individual pre-emptor appeared in every case, and in every case received a certificate; and whether it ran to him in his own, or in an assumed name, he nevertheless was the person to whom the title passed under the authority of the cases cited in this brief.

This Court, in the case of Polk's Lessee *vs.* Wendall *et al.*, 9 Cranch, 97, in speaking of the *quesi* judicial powers of registers and receivers of United States Land Offices, says: "The laws for the sale of public lands provide many guards to secure the regularity of grants, to protect the incipient rights of individuals, and also to protect the State from imposition. Officers are appointed to superintend the business, and rules are framed prescribing their duty. These rules are, in general, directory, and when all the proceedings are completed by a patent issued by the authority of the State, a compliance with these rules are presupposed. That every prerequisite has been performed, is an inference properly deducible, and which every man has a right to draw from the existence of the grant itself. It would, therefore, be extremely unreasonable to avoid a grant in any Court for irregularities in the conduct of those who are appointed by the Government to supervise the progressive course of a title from its commencement to its consummation in a patent."

And when that case was again in this Court, reported in 5 Wheaton, 293, at page 304, the Court again said: "It will be perceived that as to *irregularities* committed by the

officers of the Government, prior to the grant, the Court does not express a doubt but that the Government, and not the individual, must bear the consequences resulting from them. On the contrary, it declares that the existence of the grant is, in itself, a sufficient ground, from which every man may infer that every prerequisite has been performed.

It may be urged that, although complainant's proof was very slight as to the fictitious grantees, nevertheless it was sufficient to shift the burthen of proof. Complainant does not occupy that favorable position. It had the means in its power to prove the facts as to these entries by calling the men whom it charges committed the frauds, and they would have been forced to answer, because Cook was examined as a witness on August 6, 1877 (page 129–131 record). All entries were made prior to June, 1873. The Statute of Limitations barred any prosecution for the offenses he had committed.

Sec. 1044 R. S. U. S.

"If the prosecution to which he might be exposed is barred by lapse of time, the privilege ceases and the witness is bound to answer."

1 Greenl. Ev. close Sec. 451.
People *vs.* Mather, 4 Wend. 229 p. 252–5.

The fact the answer might tend to disgrace him would not excuse an answer.

1 Greenl. Ev. Sec. 456, and authorities in Note E.

The prosecution having evidence by which the fact could be established has failed to produce it. This Court, then, should not indulge in any presumptions of irregularities on the part of the register and receiver in the making of the entries, but should say complainant must fail for want of proof. That it must be presumed the papers in the record speak the truth, especially when unchallenged by competent evidence, and that the decree upon this point

is not sustained by testimony, and is rendered against the evidence and must be reversed.

The bill alleges that Stanton and Cook, for the purpose of having the patented title lodged in Moffat, executed deeds in the names of fictitious persons, and had them acknowledged. It is worthy of notice that Samuel S. Landon took several of these acknowledgments, and he says that the men did appear before him and acknowledged the deeds as his certificate states. (See his testimony, pages 106 to 108 of the record, inclusive.) His testimony certainly does not support the allegations of the bill, and if they had produced Messrs. Kellogg and Cass, men well known in Colorado, they would have given the same testimony that the deeds were acknowledged by persons at least assuming to convey the title, and that the acknowledgements were not put upon the paper when no one appeared.

Second Error—That inasmuch as all the fraud charged in the bill was committed by Stanton as the register and Cook as the receiver of public moneys of the United States Land Office, at Pueblo, the Court erred in not giving the patent the force and effect of a good and valid conveyance as against Moffat, and in not holding that the government was bound in what the register and receiver certified was done in pre-empting the land and in making proof of settlement thereon as against Moffat and Carr, and in visiting the wrongful acts and practices of the register and receiver in entering this land upon Moffat and not upon the government, and decreeing the land was never entered, or that the patentees never actually existed.

The entry of the lands and the patents issued by the Government are declarations by it that all the steps required by law antecedent to the entry of the lands and the issue of the patent have been complied with, and the Government is conclusively bound by these declarations as against a bona fide purchaser for value. It may not, therefore, as against such a purchaser, as-

sert that the lands were never entered or that the patantees did not actually exist.

The principle here asserted is that, as the validity and sufficiency of the steps to be taken antecedent to the issue of a patent are to be determined by certain officers to be appointed by the Government in the exercise of a judicial function, the Government is bound by their determination, even if they acted fraudulently and those determinations were false, as against a purchaser for value and without notice.

The nature and character of the functions performed by the officers of the Government are a matter of easy determination.

Section 12 of the Pre-emption Act of 1841 (See Stat. 88 at large, p. 456, R. S. U. S., Sec. 2264,) enacts as follows:

"And be it further enacted, that prior to any entries being made under and by virtue of the provisions of this Act, *proof of the settlement and improvements thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie*, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void."

The rules promulgated for the guidance of these officers require them personally to take the most careful and elaborate proofs by affidavit of the facts essential to the entry of public lands, and the pre-emptor and his witness or witnesses are required to attend personally before these officers in the making of said proofs.

Section 2262 of the Act of 1841, R. S. U. S., provides—

Before any entry is allowed the person asking it must make oath before the register or receiver that he has never had the benefit of any right of pre-emption under the act; that he is not the owner of 320 acres of land in any State or Territory of the United States; that he has not settled upon the land to sell it on speculation, but in good faith to appropriate it to his exclusive use; and that he has made no agreement by which the title acquired is to inure to the benefit of any other person. The penalty of a false oath in regard to any of these particulars nullifies the pre-emptor's title and any grant or conveyance made by him, *except in the hands of bona fide purchasers for a valuable consideration.*

Thus, before any entry can be made it has to be proved to the satisfaction of the register and receiver, that there has been the settlement upon and improvement of the land required by the act, to wit: "*That a person of the class mentioned in section 2263 has inhabited and improved the land sought to be pre-empted and has erected a dwelling thereon;*" and the allowance of the entry is an adjudication of those facts by the officers appointed by the government. An entry, therefore, is a certification to all the world by the government, acting through its officials, that an actual person, entitled to pre-empt public lands under the law, has settled upon and improved the land entered, and erected a dwelling upon it.

The other facts required to be proved by section 2262 are irrelevant to the validity of the title when it has passed to a *bona fide* purchaser for value, by the express provision of the statute.

May the government, then, after it has, by entering lands, certified to all the world that after due inquiry and proof, made by and before its own officers, it has been by them determined and adjudicated that an actual person has complied with the provisions of law, as to settlement and improvement, insist that the title, after it has passed to a *bona*

fide purchaser for value, is void on the grounds that there was no such person or no such settlement and improvement, and that the same were falsely and fraudulently found to exist by its own officers. There should be little difficulty in maintaining the negative of this proposition.

The judicial character of the functions of the register and receiver in passing upon these matters preliminary to the pre-emption of public lands is well settled, as appears by reference to the following authorities:

Vance *vs.* Burbank, 101 U. S., 514,

Which was a case involving the question whether Scott had resided upon and cultivated the lands in dispute for four consecutive years, and had otherwise conformed to the requirements of the Oregon donation act. This Court, speaking through its Chief Justice, said: "The question in dispute is one of fact. That is to say, whether Scott, when he demanded his patent certificate as against the other contesting claimant, had resided on and cultivated the land in dispute for four consecutive years, and had otherwise conformed to the requirements of the donation act. This was to be determined by the Land Department, and as there was a contest, the contending parties were called on in the usual way to make their proofs." * * * * * * "The appropriate officers of the Land Department have been constituted a special tribunal to decide such questions, and their decisions are final to the same extent that those of other judicial or *quasi* judicial tribunals are."

Steel *vs.* Smelting Company, 106 U. S., 447.
Smelting Company *vs.* Kemp, 104 U. S., 634.
French *vs.* Fegan, 93 U. S., 169, and authorities cited in these cases.

Speaking on this subject, the Court, in Steel *vs.* Smelting Co., 106 U. S., 450, said, with emphasis:

"We have so often had occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public lands, that it creates an unpleasant surprise to find that counsel, in discussing the effect to be given to the action of that department, overlook our decisions on the subject. That department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of the different Acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the *qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale.* Its judgment upon these matters is that of a special tribunal, and is unassailable, except by direct proceedings for its annulment or limitation."

A patent is an official declaration by the Government that all the requirements preliminary to the issue have been complied with.

In Smelting Company *vs.* Kemp, 104 U. S., 640, the United States Supreme Court said on this subject:

"The execution and record of the patent are the final acts of the officers of the Government for the transfer of its title, and as they can be lawfully performed only after certain steps have been taken, that instrument, duly signed, countersigned, and sealed, not merely operates to pass the title, *but is in the nature of an official declaration by that branch of the Government* to which the alienation of the public lands under the law is intrusted, that all the requirements preliminary to its issue have been complied with."

This is so plain that no further citation of authority is necessary, and of course the certificate of entry issued by

"Another answer to this ground of defense is, that the purchaser of the bonds has a right to assume that the vote of the county, which was made a condition to the grant of the power, had been obtained, from the fact of the subscription by the board to the stock of the railroad company, and the issuing of the bonds."

"The bonds on their face import a compliance with the law under which they were issued. This bond we quote is issued in part payment of a subscription of two hundred thousand dollars, by the said Knox County, to the capital stock, etc., by order of the Board of Commissioners, in pursuance of the third section of the act, etc., passed by the General Assembly of the State of Indiana, aud approved fifteenth day of January, 1849."

"The purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power."

See also, Town of Coloma *vs.* Eaves, 92 U. S., 484.
Marcy *vs.* Township of Oswego, 92 U. S., 637.
Humboldt Township *vs.* Long *et al.*, 92 U. S., 642.

The case of Knox County *vs.* Aspinwall, *supra*, has been followed in many other cases. The important principle of law it announced and applied is firmly fixed, and it rests on a strong foundation of justice and business necessity. It saved millions of property invested in good faith in municipal bonds from loss and repudiation by submitting the counties, cities and towns which had them issued to the operation of the same rules of law and equity which govern the relations of private individuals. The legal principle settled by those cases has never been more tersely stated than by Judge Dillon, in the following language: "If upon a true construction of a legislative enactment conferring the the authority, the corporation or certain officers, or a given body or tribunal, are invested with power to decide whether the condition precedent has been complied with, then it may well be that their recital of their determination of a matter

in pais which they are authorized to decide will, in favor of the bond holder for value, bind the corporation."

Dillon on Municipal Corporations, Sec. 253, 3d. Ed.

This statement has the approval of the United States Supreme Court, which has referred to it as "a very cautious statement of the doctrine." (*See Town of Coloma vs. Eaves, 92 U. S., 491.*) Is not this principle decisively applicable to the facts of the present case?

The condition precedent to the issue of a patent to public lands, or the certificate of entry upon which it is issued, is *that an actual person* shall have lived upon the land, improved it, built a dwelling on it, and paid the purchase price. In the bond cases the condition precedent nearly always is that their issue shall have been authorized by a majority vote of the qualified voters of the municipality. The determination of the facts of settlement and improvement by an actual person necessary to entitle that person to an entry of public land is, as we have seen, confided to the register and receiver of the land district—officers of the Government—to whose satisfaction those facts have to be proved. So also as to municipal bonds. There is always some body or officer upon whom is imposed the duty of determining whether or not the majority vote has been obtained, or the other condition precedent complied with. A certificate of entry is a public and recorded statement that it has been proved to the satisfaction of the officers of the Government that an actual person has settled upon and improved the land involved, in compliance with the requirements of the act, and a patent, in the language of *Smelting Company vs. Kemp, 104, U. S., supra, is* "an official declaration by that branch of the Government to which the alienation of the public lands is entrusted that the requirements preliminary to its issue have been complied with." These declarations are the equivalent of the recitals of the officers or bodies to whom is entrusted the duty of determining whether or not the conditions precedent to the issue of bonds have been complied with, that those conditions have

been complied with. If, then, according to this doctrine so firmly established, such recitals in the case of an issue of bonds binds the corporation to everything declared by them, notwithstanding that they are false and fraudulent, surely a certificate of entry and patent of public land must similarly bind the Government to everything declared by them.

The analogy between these two groups of facts and relations is perfect, and the principle of law which governs the one must govern the other. The subject matter of both is property, and to distinguish between them is to resort to sophistry.

It may be argued that this principle should not apply as to the fundamental fact whether or not there was an actual pre-emptor. Such an argument would be that as to the facts of settlement and residence on the land, the certificate and patent are binding, but that they do not conclusively declare the existence of a pre-emptor. Any such distinction, I maintain, is utterly baseless. Settlement and residence imply a person who has settled and resided on the land; it is some particular person who has entered upon the land and taken up his residence upon it. When it is said that a patent is a conclusive declaration of settlement and residence on the land, the full fact expressed by the words settlement and residence is that an actual person has settled and taken up his residence on the land. A settlement and residence without a person is impossible. Whatever announces or declares that there has been a settlement, necessarily announces and declares that an actual person has effected this settlement. In this regard, the separation of these two facts—the settlement and an actual person—are inconceivable. It would clearly seem to be an absurdity to say that a patent is conclusive as to a settlement, but not as to an actual person having made it. With equal force might it be argued that a recital in a municipal bond that its issue was authorized by a majority vote is conclusive only as to the regularity of the election at which the votes

were cast, but not as to an actual election having been held. But the town-bonding cases are directly against that proposition.

There is not wanting the highest judicial opinion in favor of my position.

In the case of Polk's Lessee *vs.* Wendel, 5 Wheat., 293, the Court said, page 304:

"It will be perceived that as to irregularities committed by the officers of the government prior to the grant, the Court does not express a doubt but that the Government, and not the individual must bear the consequences resulting from them." And again, at page 307: "They (referring to the Court) have never expressed an inclination to let in inquiries into the frauds, irregularities, acts of negligence or of ignorance of the officers of the Government prior to the issuing of the grant, but, on the contrary, have expressed the opinion that the Government must bear the consequences." And, in the same case, when previously in the Supreme Court (9 Cranch, 98), Chief Justice Marshall held the same doctrine in the following language: "It would, therefore, be extremely unreasonable to avoid a grant in any Court for irregularities in the conduct of those who are appointed by the Government to supervise the progressive course of a title from its commencement to a consummation in a patent."

See also Patterson vs. Winn, 11 Wheat., 380, 387.
Patterson vs. Jenks, 2 Peters, 216, p. 237.
United States vs. Arredondo, 6 Peters, 729, p. 730.

Thus, both sound principle and authority assert that when the facts antecedent to the issuing of a patent of public lands are left to the determination of officers of the government, and those officers have certified to the existence of the facts so that a patent has issued, the government is bound by the determination of its officers as against purchasers for value without notice, and Courts will not, at the

instance of the Government, allow any inquiry into the irregularities or frauds of those officers with a view to nullifying the patent. Accepting this as the law of the present case, it follows that it must be conclusively presumed in this case that there were actual settlers on the lands in question who had complied with the requirements of the pre-emption act of 1841, and to whom the certificates of entry and patents ran; and the complainant's case, so far as it is based upon the denial of those facts, must fail.

It may be asserted in opposition to this argument that the case quoted holding the finality of the action of the officers of the Land Department of the Government, with respect to the proceedings antecedent to the issuing of a patent, expressly recognize the propriety of a direct proceeding in equity to annul a patent where there have been frauds or irregularities.

My answer to this position is that the direct proceedings referred to simply relate to the right of the Government to proceed against a patentee for the annullment of a patent held by him, obtained through *his* fraud or irregularities, which imposed upon or deceived the officers of the Government. *There is no adjudication countenancing a direct proceeding instituted upon such a ground against a bona fide purchaser for value, when the officers of the Government actually co-operated in the fraud and were the means of its consummation.* I believe I am right in asserting, is there any case or adjudication sustaining such a proceeding against a *bona fide* purchaser of the lands for value under any circumstances. That the right to maintain such a proceeding when it will lie against a party because of his frauds is lost by the transfer of the property to a *bona fide* purchaser for value, is explicitly ruled in the case of *Commissioners of Knox County vs. Aspinwall, 21 How., 545;* as shown by the quotation from that case which I have given. It is indisputable that such a proceeding will lie against a party himself obtaining the patent under certain conditions; but the situation changes the moment the rights of a *bona fide* pur-

chaser for value are introduced. And in no event will such a preceeding lie when it appears that the officers of the Government promoted the alleged frauds.

I urge most strenuously the conclusiveness of the argument presented on this point, and the doctrine upon which it rests, as a complete and just solution of this controversy. That doctrine is indeed but a corrolary from that fundamental maxim of the law that when one of two innocent persons must suffer by the deceit of another, it is more consonant with reason that he who puts trust and confidence in the deceiver should be the loser rather than a stranger.

Carpenter *vs.* Longan, 16 Wall., 271–273.
R. R. Co. *vs.* Schuyler, 34 N. Y., 69.
Griswold *vs.* Haven, 25 N. Y., 599.

The register and receiver were the officers of the government, appointed by it to their places and held out by it to all the world as fit and capable men. The frauds set out in the complainant's bill, if they were committed, were their frauds. They could not have been accomplished without the co-operation and affirmative action of those officers. The question arising upon whom the results of that wrong doing should now be visited as between the government, which was responsible for putting those men in their places, and the owners of the property for value and without notice, there would seem little room for hesitation in deciding that the burden should be borne by the government. Were it an individual who was so situated without doubt it would be ruled that the wrong doing of his agents must be visited upon him. This is the simple justice of the matter. Is the government superior to the rules of justice which are applied to individuals? It would be strange if a Court of equity should hold that the high prerogative of sovereignty was a weapon with which to accomplish a great wrong with impunity. Municipalities, exercising as they do by delegation, high governmental powers, when they sought to escape from liability on their bond obligations, were held to be

subject to the rule of estoppel which is invoked in this case. If they were not superior to it, neither should the government be. The same considerations apply to each.

This suit is not maintainable to set aside the patents *on the ground of the certificates of entry having been obtained through false or fraudulent testimony in the proceedings before the land officers.*

United States *vs.* White, 17 Federal Reporter, 569.

In the Circuit Court for the district of California, Justice Sawyer says: "This is a bill in equity to vacate a United States patent issued to the defendant on the ground that it was obtained upon false and fraudulent affidavits and proofs made under the pre-emption laws. * * * * It is further alleged that said affidavits and proofs were false; that defendant did not make the settlement as stated; did not reside upon said land; and that he did own 320 acres of land elsewhere, and on the ground of these false representations and proofs, complainant asks that the patent be vacated and canceled, and the money paid be adjudged forfeited to the United States."

The learned jurist then refers to the case of the
United States *vs.* Throckmorton, 98 U. S., 68.
Vance *vs.* Burbank, 101 U. S., 514, and then says:

"We think these decisions establish the doctrine on which we decide the present case, namely, that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relations to frands extrinsic or collateral to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered."

"That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts, or documents whose

genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases."

98 U. S., 68.

He further says: "Thus the decisions of the Land Office on applications for patents were put upon the same footing as judgments and decisions of courts and other tribunals like the board of land commissioners." * * *

"Again, it is a principle that, with reference to private parties, a court of equity will not grant relief against a fraud, unless it appears that some damage or injury has been sustained by reason of the fraud: for 'courts of equity do not, any more than courts of law, sit for the purpose of enforcing moral obligations or correcting unconscientious acts which are followed by no loss or damages.'"

I Story Eq. Jr., 203.

"It does not appear that the United States has been pecuniarily injured by the alleged fraud. No injury or damage is alleged, or in any way shown. The land was for sale to any duly authorized pre-emptor at $1.25 per acre. Defendant paid the full amount of the purchase money, and it went into the United States Treasury. The Government got all it would have obtained from any other party. It does not appear that anybody else had any rights or wanted to purchase, or that the United States was under any obligation to patent the land to any other person. There is no possible pecuniary injury to complainant. The most that can be said is that a principle of public policy was violated, and thereby a moral wrong resulted by reason of the legal disqualifications, under the pre-emption act, of defendant to purchase. But the wrong was only *malum probitum*, not *malum per se*. It is by no means clear that the demurrer ought not to be sustained on this ground,

but it is unnecessary to so decide now, for, in my judgment, it is not a case to be taken out of the rule established in the cases cited of Throckmorton and Vance. In view of the notorious liberality in favor of purchasers, not to say looseness, with which the pre-emption laws have, ever since their adoption, been administered all over the Western States, to relax the rules referred to in the authorities cited, especially where no actual pecuniary damage or injury has resulted, either to the government or private parties, and 'Retry every case in which' the action of the Land Office, as well as 'judgments or decrees rendered on false testimony given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterward ascertained to be forged or fraudulent,' would open a Pandora's box of evils 'far greater than any compensation arising from doing justice in individual cases.' It would open the door to any party, stimulated by malice or other unworthy motive, who could, upon *ex parte* and false statements, obtain the ear of the Attorney General to promote suits in the name of the United States, to the great vexation of honest, as well as dishonest, pre-emptors, and to the great detriment of the public peace and prosperity."

It is an important fact that this doctrine was applied in a suit brought by the Government directly against the patentee, who was the fraudulent party. If a bill in equity at the instance of the Government will not lie against the patentee to annul a patent because of false testimony and proofs in the pre-emption proceedings before the land officers *a fortiori*, it will not lie against a purchaser for value from the patentee without notice. This we have seen is true so far as such a purchaser is concerned; also on another ground—that discussed in the next preceding point of this brief. His position and title are impregnable. No matter what the frauds and perjuries of the patentee in the pre emption proceedings respecting the facts of settlement and residence on the lands may have been, the title of the *bona fide* purchaser is unassailable.

Whatever may be said of Moffat's title, it seems to me that Robert E. Carr, trustee, must be protected upon the ground of an innocent purchaser who purchased the undivided half of this property from Mr. Moffat, a man who has been prominently and favorably known in the State of Colorado for over twenty years, and then was, as he now is, the head of the largest banking institution in the State. Is this Court going to say that Mr. Carr loses his title to that land without a word of testimony charging him with any knowledge? Every allegation of the bill in relation to Mr. Carr was fully denied by him, and not a particle of testimony offered in support of the bill. It seems to me impossible for him to lose his title unless the Court should find the grantees were all fictitious and the Government had never parted with its title to the land, and if the patent is sustained as to the undivided half owned by Carr, it follows as a necessary consequence it must be held valid as to the other half owned by Moffat. If the title can be set aside and destroyed upon the allegations of the bill in regard to Carr's relations to this controversy, then the Government can set aside any patent and destroy any man's title because it is done by force of judicial decisions, without reason or law in its support.

Third Error—That the Court below erred in not decreeing defendant was an innocent purchaser for value, and as such was protected from the evil consequences flowing from the fraudulent method by which the patents were issued, if fraud was practiced in procuring these patents.

The bill avers that Moffat and Carr have whatever title passed from the Government by the patents. It is a sound position to say that the government, by its patents, conveyed the fee simple title to the patentees or it conveyed nothing, and that Moffat and Carr now have such title or no title whatever. They were not required to plead they were innocent purchasers for value, like a person who defended against an action brought by a *cestui qui trust* or the first

grantee under an unrecorded conveyance, because here there is no third party, it is the Government upon the one side and one of its citizens upon the other, and the substantive allegations of the bill are that by the fraud of its agents, complainant was induced to issue a patent purporting to convey the fee simple title to a party not entitled to receive it, and that title, by mesne conveyances has become lodged in defendants Moffat and Carr, and, by reason of such fraud it desires to have its conveyance canceled and annulled. The title is still in the Government or else it is in Moffat and Carr. But the last amended bill contains no allegation charging Moffat and Carr with any knowledge whatsoever of the fraudulent practices by which said land was entered. The only allegations with reference to said Moffat and Carr are found on page 44 of the record, and are to the effect that Carr well knew of the supposed pre-emption of said land, and that it had been fraudulently obtained, and that the statements contained in said supposed proofs and certificates were false and fraudulent. Such allegation is not a traversable one of fraud. It is rather the conclusion of the pleader.

Story's Eq. Pl., Sec. 251, 251*a* and 252.

And if we turn to the allegations of the first amended bill found on p. 19 of the record, for averments charging Carr with fraud, they are to the effect that he, together with Moffat, Stanton and Cook, procured some person to represent the patentees and made the entries, which is an express averment that the patents had real persons as patentees, acting under assumed names. But I suppose it is by the allegations of the last amended bill that Carr's rights are to be determined. But if this Court should think that that allegation of fraud was sufficient, my reply is,

First—That all knowledge of fraud is denied by Moffat and Carr.

Second—That there is not a scintilla of testimony in the record, pointing to any fact or circumstance which tends to show either Moffat or Carr acted in collusion with Stanton and Cook or anyone connected with the fraud, and it matters but little what allegations are in the bill as long as they are denied in the answer and not supported by proof. And, further, I maintain that the fraud having been practiced on the Government by its register and receiver, complainant is bound by it, and it does not affect Moffat and Carr.

As this Court has stated in the case of the

United States *vs.* Throckmorton, 98 U. S., 64:

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents and even judgments. There is also no question that many rights, originally founded in fraud, become, by the lapse of time, by the difficulty of proving the fraud, and *by the protection which the law throws around rights once established by formal judicial proceedings in the tribunal established by law according to the methods of law, no longer open to inquiry in the usual and ordinary methods.*" That fraud spoken of in the bill is such that complainant has no right to reach it and undo what was consummated through it.

Moffat and Carr expressly aver in their answer, p. 48 of the record, that they purchased said land in good faith and in the belief that there was no question relating to the title thereto, and that all the proceedings relating to the title thereto were regular and in conformity with law. The bill avers (p. 43 of the record): And your orator, confiding in the honesty of its said officers, Stanton and Cook, and believing the statements contained in its said proofs and certificates of location to be true, and that the persons existed who represented said fictitious names, and that he had a *bona fide* right to pre-empt the above described land, and being misled by the representations so made in said proofs and cer-

tificates, and relying entirely upon their truth, was induced to, and did, on the fourth of October, 1873, issue a patent for said land.

We here have an admission by complainant that the deception practiced upon it by its agents was successful, and that it was misled and deceived by them. With how much greater force will Moffat and Carr's assertion be received, that they relied upon what was represented upon paper by the agents of the Government, and invested their money on the strength thereof, and should they not now be protected? They again invoke the maxim when one of two innocent persons must suffer, the loss must be borne by that one who, by his conduct, acts or omissions, has rendered the injury possible. And, where the equities are equal, the legal title must prevail. If defendants are innocent purchasers, this decree is wrong, because their equities are at least equal to those of complainant, and they, holding the legal title, must succeed.

There is an allegation in the bill that Moffat purchased these lands after the certificate of entry had been issued by the register and receiver, and prior to the issuing of the patent, thereby intending to charge him with notice of the irregularity of the entry; such allegation is wholly insufficient for that purpose. It is a well-known fact that in the Western States many patents are never taken from the Land Office, the party holding the certificate of entry, having a title which can only be overcome by the patent itself, rests in security upon these certificates of entry, which are deemed evidences of a title in fee in the person making the entry.

The laws of Colorado, Section 1080 of Chapter XXXII, entitled "Evidence," provides:

1080. SEC. 3. The official certificate of any register or receiver of any land office of the United States, to any fact or matter on record in his office, shall be received and held competent to prove the fact as certified. The certificate of any such register of the entry or pur-

chase of any tract of land within his district shall be deemed and taken to be evidence of title in the party who made such entry or purchase, or his heirs and assigns; but a patent for land shall be deemed and considered a better legal and paramount title in the patentee, his heirs or assigns, than such register's certificate of entry and purchase of the same land.

The patent is not the title itself, but is simply the evidence of it, which is one grade higher as evidence than a certificate of entry.

In the case Gallipot *ex dem.* Bruner, plaintiff in error *vs.* Manlove *et als.*, defendants in error, I Scannon, (Ills.), 156, the Court say, after quoting the language of the Illinois statute, with which the Colorado Statute above quoted is identical, page 162: "From this section of that act, it is manifest that the register's certificate is raised to as high a character in point of evidence, in the present form of action (which was ejectment), as a patent possibly could be. Its effect is to be the same, and the rights derived from it for the purpose of recovering or maintaining possession of lands described in it, are co-extensive with the most formal, regularly issued patent. These certificates not only vest the title acquired by purchase from the Government in the purchaser, for the purposes named, but make that title transmissable to the heirs or to the assignee."

And this court, in the case of Witherspoon *vs.* Duncan, 4 Wallace, 210, at page 218, says: "In no just sense can lands be said to be public lands after they have been entered at the land office and a certificate of entry obtained. If public lands before the entry, after it they are private property. If subject to sale, the government has no power to revoke the entry and withhold the patent. A second sale, if the first was authorized by law, confers no right on the buyer and is a void act."

No bad faith can be imputed to Moffat and Carr by purchasing the land after it had been entered and the government had received its pay for it.

Fourth Error—No offer is made in the bill to return the scrip or money received for the land. This is inequitable and the decree is wrong and should be reversed for want of equity in the bill.

When the government goes into a Court of justice it is to be treated like any other litigant, and its rights with few exceptions are governed by the same rules of law that pertain to citizens.

The Siren, 7 Wallace, 152.
Floyd Acceptances, 7 Wallace, 666.
Brent *vs.* The Bank of Washington, 10 Peters, 596.

At 615 this Court declares: "There is no reason why the United States should be exempt from the fundamental rules of equity subject to which its Courts administer their remedy. If it is compelled to come into a court of equity to enforce a legal right, the United States must come as other suitors seeking in the administration of the law of equity, relief, etc."

It is not sufficient answer to say that under the allegations of the bill the money was paid by Stanton or Cook, and the grantees were fictitious, and the government did not know to whom it should refund it. If it be true that Moffat was a party to the fraud and furnished the money, it is properly paid to him. If he is an innocent purchaser, and those parties were fictitious, that which the government received by means of the fraud should be returned to Moffat to compensate him in part for the wrong the government does him in taking away his title.

Upon this point the case of the United States *vs.* White, 17 Federal Reporter, 565, is in point. The learned Judge says:

"The money received is retained and no tender appears to have been made, nor is any offer to refund the money made in the bill. The United States, like an individual

when it comes into court and demands equity, must do equity, or at least offer to do equity. * * * * It cannot keep the money and in a Court of Equity demand and receive a return of the land. To meet this point, and as a basis for a decree for forfeiture of the money as a part of the relief demanded in the bill, the United States Attorney relies on Section 2262, Rev. Stat, which provides that 'if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same.' This is highly penal, and the only remedy, or rather punishment, other than an indictment for perjury, that appears to be provided by law for the wrong sought to be redressed. But the United States has come into the wrong forum to enforce this penalty. It is a universal rule in equity never to enforce a penalty or a forfeiture.'"

2 Story Eq. Jr. Sec. 1319, 1494, 1509.

For the foregoing reasons I submit the decree is wrong and should be reversed.

Respectfully submitted,

L. C. ROCKWELL,

Attorney for Appellants.